

Vida Albert, 4/11/2014

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4
5 HEALTHY ADVICE, :
6 :
7 Plaintiff, :
8 :
9 vs. : CASE NO. 1:12-CV-610
10 :
11 CONTEXT MEDIA, :
12 :
13 Defendant. :
14

11 Deposition of VIDA ALBERT, a witness
12 herein, taken by the defendant as upon
13 cross-examination, pursuant to the Federal
14 Rules of Civil Procedure and pursuant to
15 agreement of counsel as to the time and place
16 and stipulations hereinafter set forth, at
17 the offices of Frost Brown Todd, 3300 Great
18 American Tower, 301 East Fourth Street,
19 Cincinnati, Ohio, at 9:30 a.m. on Friday,
20 April 11, 2014, before Vicky Marcon, a
21 Registered Professional Reporter and Notary
22 Public within and for the State of Ohio.

23 - - -
24

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1 APPEARANCES

2

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1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 VIDA ALBERT, a witness herein, may be taken
5 at this time by the defendant as upon
6 cross-examination and pursuant to the Federal
7 Rules of Civil Procedure and agreement of
8 counsel to take deposition, all other legal
9 formalities being waived by agreement; that
10 the deposition may be taken in stenotype by
11 the Notary Public Reporter and transcribed by
12 her out of the presence of the witness; that
13 the transcribed deposition was made available
14 to the witness for examination and signature
15 and that signature may be affixed out of the
16 presence of the Notary Public-Court Reporter.

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1 VIDA ALBERT,

2 A witness herein, of lawful age, having been
3 first duly sworn as hereinafter certified,
4 was examined and testified as follows:

5 CROSS-EXAMINATION

6 BY MR. HANKINSON:

7 Q. Good morning. My name is Tom
8 Hankinson. Thank you for coming in today. I
9 represent the defendant in the lawsuit that
10 we're here about today, Context Media.

11 A. Mm-hmm.

12 Q. Are you aware of who the
13 plaintiff is in that case?

14 A. Yes.

15 Q. And who is that?

16 A. That would be Patient Point.

17 Q. And did Patient Point previously
18 go by the name Healthy Advice Network?

19 A. Yes. Networks.

20 Q. Networks. Thank you. Would you
21 please state your name and spell your last
22 name?

23 A. Vida Albert, A-L-B-E-R-T.

24 Q. And maybe spell your first name,

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8

1 as well.

2 A. V as in Victor, I as in India, D
3 as in delta, A as in alpha.

4 Q. Thank you. Have you ever given
5 a deposition before?

6 A. Yes.

7 Q. And in what -- about how long
8 ago?

9 A. About 30 years ago.

09:36

10 Q. Did you say three or 30?

11 A. Thirty.

12 Q. Thirty years ago. What kind of
13 matter was it, if you remember?

14 A. It was in the military and it
15 had to do with sexual harassment.

16 Q. Do you remember much about the
17 deposition process?

18 A. Just that it was pretty
19 unpleasant at the time.

09:37

20 Q. Sorry to hear that. That's a
21 topic very much in the news lately.

22 A. It wasn't much in the news back
23 then.

24 Q. No. Well, I'll go over a few of

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1 the sort of general, you can call them
2 guidelines or ground rules. First of all,
3 and you're doing a great job so far, please
4 answer out loud and please wait until I'm
5 finished with a question before you answer
6 and I'll try to do the same. I'll try to let
7 you finish your answer before I move on to
8 the next question. Is that okay?

9 A. Absolutely.

09:37 10 Q. Also, while you're answering out
11 loud, please try to avoid going "mm-hmm" or
12 "uh-huh", because sometimes that can be
13 ambiguous as to whether you mean yes or no.
14 Okay?

15 A. Absolutely.

16 Q. If you ever don't understand one
17 of my questions, I would like you to tell me
18 that or ask me to repeat it, if that's what
19 you need, or ask me to rephrase it if that
09:38 20 would help. Okay?

21 A. Yes.

22 Q. If you answer a question, I'm
23 going to assume that you understood it. Is
24 that okay?

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1 A. Yes.

2 Q. If you need a break, just let us
3 know. We can take a break at any time, but
4 you'll be asked to answer any question that's
5 pending, that's already been asked, and then
6 we'll take a break. Okay?

7 A. That's fine.

8 Q. Sometimes your attorney -- is
9 Mr. Bernay your attorney today?

09:38

10 A. He is Patient Point's attorney,
11 yes.

12 Q. Is he representing you for this
13 deposition?

14 A. Yes.

15 Q. Sometimes Mr. Bernay may object
16 to one of my questions. If he does, let him
17 finish. Unless he instructs you not to
18 answer, when he is done with his objection
19 you should go ahead and answer. Okay?

09:39

20 A. Yes.

21 MR. HANKINSON: Anything else
22 before we kind of get started?

23 MR. BERNAY: I think we're good.

24 Q. Do you know an employee at

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11

1 Patient Point named Joyce Lawrence?

2 A. I do.

3 Q. Were you aware of her giving a
4 deposition in this matter?

5 A. Yes.

6 Q. Were you aware before that
7 happened or did you find out about it
8 afterwards?

9 A. I found out about it afterwards.

09:39 10 Q. Do you work with Ms. Lawrence?

11 A. In a very limited capacity.

12 Q. Ms. Lawrence is in a team that's
13 sometimes referred to as the Customer
14 Relationship -- Practice Relationship
15 Management Team. Is that accurate?

16 A. That's correct.

17 Q. And what group or team or
18 department are you in?

19 A. I'm part of the Field Services.

09:40 20 Field Digital. I'm sorry.

21 Q. Field Digital?

22 A. Field Services Digital.

23 Q. Is there a nickname for that
24 that you use?

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12

1 A. FSD.

2 Q. What are your job
3 responsibilities?

4 A. I code invoices and track
5 inventory.

6 Q. Do you fulfill those roles
7 company wide or only for certain products and
8 services?

9 A. Company wide.

09:41 10 Q. Who do you report to?

11 A. Kimberly Theiss.

12 Q. What is your job title?

13 A. Vendor Accounts Manager.

14 Q. What is Ms. Theiss's job title,
15 if you remember it?

16 A. I believe it's Executive Vice
17 President, Field Services.

18 Q. Maybe like five years ago
19 everybody dropped the of's. It's always like
09:42 20 a coma or a dash. Executive Vice President,
21 Field Services. I always get confused about
22 that. And so is Ms. Theiss in charge of the
23 entire FSD?

24 A. Yes.

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13

1 Q. And do you commonly refer to
2 that as a team or group, or how do you like
3 to --

4 A. Team.

5 Q. And who does Ms. Theiss report
6 to?

7 A. To Tom McGinnis.

8 Q. Mr. McGinnis is the CEO.
9 Correct?

09:42 10 A. That's correct.

11 Q. How long have you worked for
12 Patient Point and before that Healthy Advice
13 Networks?

14 A. I'm going on my tenth year.

15 Q. Your title is Vendor Accounts
16 Manager. Who are the vendors that are being
17 referred to there?

18 A. PCM, which was, used to be known
19 as Sarcom, Contingent, Integron,

09:43 20 I-N-T-E-G-R-O-N. Oh, gosh. I'm having a
21 brain freeze here. ARS, also -- oh, Verizon,
22 AT&T, UPS, just about any vendor that crosses
23 our path, but those are the main ones. I
24 code all of their invoicing.

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14

1 Q. PCM that used to be Sarcom,
2 Contingent, Integron and ARS, are those
3 vendors related to installation or
4 deinstallation of systems in doctors' offices
5 waiting rooms?

6 A. Yes, they are.

7 Q. Do all four of them both install
8 and deinstall on behalf of Patient Point?

9 A. Integron does not, but

09:44 10 Contingent, ARS and PCM do.

11 Q. What is Integron limited to?

12 A. Integron is warehousing.

13 Q. Is that the only warehousing
14 vendor that Patient Point uses?

15 A. No. Contingent is a warehouse,
16 also, but they also install, deinstall and
17 service.

18 Q. Does Patient Point have its own
19 technicians for service, installation or
09:45 20 deinstallation?

21 A. No, we do not.

22 Q. Do the vendors that you use have
23 certain regions or territories, or how is it
24 divided up?

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15

1 A. It's divided up regionally.

2 Q. And about where are they? Like
3 which regions do each cover? Hold on. Let
4 me rephrase it. Which region does each
5 cover?

6 A. We -- it changes according to
7 availability of technicians plus according to
8 where we have salespeople available. So I
9 couldn't give you that without looking,
10 without looking or checking with Amy Petrik.

11 Q. The regions change over time?

12 A. Mm-hmm.

13 Q. What is -- could you spell Ms.
14 Petrik's last name?

15 A. P-E-T-R-I-K.

16 Q. What's her title?

17 A. She is Director of Field
18 Services Digital.

19 Q. Does she report to Ms. Theiss?

20 A. Yes.

21 Q. Would you please give me a sense
22 of your office or area and where it sits in
23 relation to the people who work in Practice
24 Relationship Management?

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16

1 A. I'm upstairs from them.

2 Q. One flight?

3 A. Yes. I'm on the third floor.

4 They're on the second floor.

5 Q. By what means do you communicate
6 with them, for instance, phone, in person,
7 e-mail, whatever else there might be?

8 A. E-mail, phone and in person.

9 Q. There's also database that

09:47 10 Patient Point uses called CMS. Right?

11 A. That's correct.

12 Q. Do you sometimes enter
13 information in to CMS?

14 A. Yes.

15 Q. The Practice Relationship
16 Management Team, at least according to my
17 understanding, enters almost every
18 interaction that they have with a practice
19 into CMS. Maybe that's not true. Maybe it's

09:48 20 90 percent or whatever, but it seems like a
21 lot of what they do they enter into CMS.
22 Would you say that's similar to how you use
23 CMS or it's different?

24 A. It's the same.

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1 Q. What about when you do something
2 internally where you don't speak directly
3 with a practice, do you still enter it into
4 CMS?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. I'm not sure I understand the
8 question.

09:49

9 Q. When you -- do you authorize
10 invoices to be paid?

11 A. Yes.

12 Q. When you do that do you enter it
13 in the CMS?

14 A. No, I don't.

15 Q. Do you give instructions to
16 vendors about what actions to take at a
17 doctor's office?

18 A. Yes, I do.

09:49

19 Q. Whenever you do that, do you
20 enter it into CMS?

21 A. Yes, I do.

22 Q. Is it company policy to do so?

23 A. Yes, it is.

24 Q. Do you enter it into CMS at or

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18

1 shortly after you give the instruction to the
2 vendor?

3 A. Yes, I do.

4 Q. In every case?

5 A. Ninety-nine percent of the time.

6 Q. And that's also according to
7 company policy. Correct?

8 MR. BERNAY: Object to the form.
9 You can answer.

09:50

10 A. Yes.

11 Q. Do you intend for your CMS
12 entries to be 100 percent accurate when you
13 write them?

14 A. Yes.

15 Q. If you discovered an error that
16 had been made in an entry in CMS, would you
17 take action to correct it?

18 A. Yes.

09:50

19 Q. Do you make entries into CMS in
20 the regular course of your job, then?

21 A. Yes.

22 Q. And are the entries, once
23 they're entered into CMS, kept by Patient
24 Point in the ordinary course of its business?

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19

1 MR. BERNAY: Object to the form.

2 You can answer.

3 A. Yes.

4 Q. Do you use e-mails to
5 communicate with vendors?

6 A. Yes, I do.

7 Q. When you -- do your e-mails with
8 vendors sometimes include instructions about
9 actions to take at doctors' offices waiting
10 rooms?

11 A. Yes, they do.

12 Q. When you're writing that kind of
13 e-mail, are you doing it in the ordinary
14 course of your job?

15 A. Yes.

16 Q. If an e-mail is kept by Patient
17 Point is the company doing that in the
18 ordinary course of its business?

19 MR. BERNAY: Object to the form.

20 You can answer.

21 A. Yes.

22 Q. Do you sometimes use saved
23 e-mails to check back what was said to a
24 vendor at a certain time?

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20

1 A. Yes.

2 Q. Are you aware of any employees
3 either in FSD or in Practice Relationship
4 Management that you would describe in any way
5 as rogue employees?

6 MR. BERNAY: Object to the form.
7 You can answer.

8 A. I'm not sure what you mean.

09:53

9 Q. Have you heard the term "rogue
10 employee" at any time before this?

11 MR. BERNAY: Object to the form.
12 You can answer.

13 A. No.

14 Q. Are you aware of any employees
15 at Patient Point, in FSD or in Practice
16 Relationship Management who go against the
17 company's instructions or take joy rides, for
18 lack of a better term, do things on company
19 time that aren't allowed by the company? Are
20 you aware of anyone who does that on a
21 regular basis?

09:53

22 MR. BERNAY: Object to the form.
23 You can answer.

24 Q. I'm not expecting that there is.

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21

1 I'm just asking.

2 MR. BERNAY: Same objection.

3 You can answer.

4 A. I don't even have the foggiest
5 idea what you're talking about.

6 Q. Thank you for being honest with
7 me about the poor quality of my question.

8 Patient Point has policies about how
9 employees are supposed to communicate with
10 doctors offices. Right?

11 A. Yes.

12 Q. There are trainings that the
13 company provides about interactions with
14 doctors offices. Right?

15 A. Yes.

16 Q. And supervisors review comments
17 in CMS and hold meetings about interactions
18 with practices. Correct?

19 A. Yes.

20 Q. Are you aware of anyone in FSD
21 or Practice Relationship Management who goes
22 against those policies and trainings?

23 A. No.

24 Q. Have you ever known Ms. Lawrence

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22

1 to go against the policies, training and
2 instruction that she was given?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. Absolutely not.

6 Q. She's a high quality employee.
7 Correct?

8 A. Absolutely.

09:55

9 Q. She's knowledgeable about
10 company policy?

11 A. Absolutely.

12 Q. Do you go against Patient
13 Point's policies, instructions or training
14 when you're performing your job duties?

15 MR. BERNAY: Object to the form.
16 You can answer.

17 A. No.

09:56

18 Q. If someone who was an employee
19 of Patient Point did go against the policies,
20 training and instruction of the company,
21 would you expect them to have some sort of
22 consequence such as a write-up or a
23 reprimand?

24 A. Of course.

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23

1 Q. Have you ever been written up or
2 reprimanded for how you handled any piece of
3 equipment that was placed at a doctor's
4 office?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. No.

8 Q. Are you aware of anyone else
9 ever being reprimanded or written up for the
10 way that they handled a piece of equipment in
11 a doctor's office?

12 A. No.

13 Q. Part of your duties include
14 helping the other members of FSD and the
15 members of the Practice Relationship
16 Management Team make final decisions and
17 implement actions regarding the treatment of
18 equipment at doctors offices. Right?

19 A. Yes.

20 Q. The equipment at the doctor's
21 office includes, among other things, a
22 monitor and a CPU. Correct?

23 A. Correct.

24 Q. When you said that your job

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1 duties included tracking inventory, are those
2 monitors and CPUs part of the inventory?

3 A. That's correct.

4 Q. How do you go about tracking
5 monitors and CPUs?

6 A. I help facilitate the changes to
7 the Serial Number Reports kept by Integron
8 and Contingent, any changes that need to be
9 made. I help track the inventory in the
10 field, help recover inventory from the field,
11 help recover inventory that is left in the
12 field by getting it recovered by UPS or
13 recovered from technicians in the field by
14 UPS, that sort of thing. I make updates to
15 CMS.

16 Q. Does anyone else fulfill the
17 same role as you at Patient Point?

18 A. No.

19 Q. So you have primary
20 responsibility for the duties that you just
21 described?

22 A. That's correct.

23 Q. If someone had been reprimanded,
24 then, for the handling of a piece of

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25

1 equipment, you would be in the loop about
2 that. Right?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. Yes.

6 Q. When members of the Practice
7 Relationship Management Team tell practices
8 what they should do with Patient Point's
9 monitors and CPUs, do they sometimes ask you
10 questions about what they should do?

11 A. Yes, they do.

12 Q. Is that part of Patient Point's
13 policies?

14 MR. BERNAY: Object to the form.
15 You can answer.

16 A. I'm not sure if it's part of the
17 policy, per se.

18 Q. Not a written policy, but it's a
19 practice that's followed to keep you in the
20 loop on the handling of CPUs and monitors in
21 doctors offices?

22 A. They -- they let me know what's
23 going on with the equipment that's there, if
24 something is lost or has been stolen or

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26

1 something like that, yes.

2 Q. Because they know you're
3 responsible for tracking it?

4 A. That's correct.

5 Q. Do you also keep track of what
6 equipment is considered obsolete?

7 A. Absolutely.

8 Q. Do monitors sometimes become
9 obsolete?

10:00 10 A. Yes, they do.

11 Q. Do CPUs sometimes become
12 obsolete?

13 A. Yes, they do.

14 Q. Do you make the decision what
15 equipment, kind of equipment is obsolete, or
16 does somebody tell you when it becomes
17 obsolete?

18 A. Somebody tells me when it
19 becomes obsolete.

10:01 20 Q. Ms. Theiss or somebody else?

21 A. No one has told me anything is
22 obsolete since Mike McAllister left the
23 company.

24 Q. About when was that?

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27

1 A. About a year ago.

2 Q. Sometime in 2013?

3 A. Yes. I'm sorry.

4 Q. No worries. We'll remind you if
5 we notice. How would Mr. McAllister tell you
6 when a piece of equipment was to be
7 considered obsolete?

8 A. He would tell Kimberly and
9 Kimberly would tell me.

10:01 10 Q. In person?

11 A. That's right.

12 Q. Would you write it down
13 somewhere?

14 A. I keep a matrix of all our
15 equipment and I would notate there.

16 Q. I don't know, but I may have
17 that. We'll see.

18 MR. HANKINSON: What exhibit did
19 we leave off at?

10:02 20 MR. BERNAY: I wasn't in the
21 last one.

22 Q. Please allow me to hand you what
23 we're going to mark as Defendant's
24 Exhibit 200.

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1 (Exhibit 200 was identified.)

2 Q. Do you recognize what has been
3 marked as Defendant's Exhibit 200?

4 A. Yes, I do.

5 Q. Is this the matrix that you were
6 just describing?

7 A. Yes, it is.

8 Q. Does this matrix appear current
9 to you, or is it a copy of something --

10:05 10 A. This is it.

11 Q. On the first page there's a list
12 that's headed "All Monitor Models". Correct?

13 A. That's correct.

14 Q. Under that there are subheadings
15 for 19-inch monitors, 26-inch monitors,
16 27-inch monitors, 32-inch monitors and that's
17 it. Right?

18 A. That's right.

19 Q. The 19-inch models on this
10:05 20 exhibit -- the 19-inch monitors that are
21 listed on this exhibit are shaded orange and
22 have parentheses saying "obsolete". Right?

23 A. Right.

24 Q. How long have all the 19-inch

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1 monitors been considered obsolete?

2 A. For about -- I want to say about
3 two years.

4 Q. You're not quite sure, but you
5 think it's about that long?

6 A. I think it's about that long.

7 Q. Were some of them considered
8 obsolete earlier or were they all moved to
9 being obsolete at the same time?

10:06 10 A. Some were considered obsolete
11 earlier.

12 Q. Do you recall when the first
13 monitor started to be obsolete?

14 A. No, because I wasn't really
15 tracking the serial numbers at that point.

16 Q. This is the first time it had
17 happened?

18 A. Right.

19 Q. Was it more than five years ago,
10:06 20 do you think?

21 A. Probably, yes.

22 Q. On the second page there's a
23 main heading that says "All CPU Models".

24 Right?

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1 A. That's correct.

2 Q. Underneath that there's a
3 subheading in yellow that says "Lenovo CPUs".
4 Right?

5 A. That's correct.

6 Q. There's another subheading in
7 yellow that says "Aopen", A-O-P-E-N, one
8 word --

9 A. That's right.

10:07 10 Q. -- "CPUs". Right?

11 A. Yes.

12 Q. On the next page there's a main
13 heading called "All-in-one"?

14 A. Yes.

15 Q. What does "All-in-one" mean?

16 A. They are the all-in-one units we
17 use for Practice Wire.

18 Q. Is Practice Wire an exam room?

19 A. No. It's a back office.

10:07 20 Q. "Back office" meaning those
21 appear in rooms that patients don't go to?

22 A. That's correct.

23 Q. Turning back to the second page
24 with the CPUs listed, there are five that are

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1 shaded orange. Right?

2 A. Correct.

3 Q. Are those also obsolete?

4 A. Yes.

5 Q. Do you remember, were they all
6 moved to being obsolete at the same time or
7 different times?

8 A. They were used -- they were all
9 made obsolete at about the same time.

10:08 10 Q. Do you remember when that was?

11 A. I want to say about -- I want to
12 say about two or three years ago. I'm not
13 spot on about the time.

14 Q. Did Mike McAllister tell you
15 that these were to be considered obsolete?

16 A. Mike McAllister is the one that
17 determined they were obsolete.

18 Q. He told Ms. Theiss and Ms.
19 Theiss told you?

10:09 20 A. That's correct.

21 Q. At a certain point in time the
22 Practice Relationship Management Team, when
23 they encountered an old CPU, would get in
24 touch with you, you would figure out whether

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1 it was one that was considered obsolete and
2 then you'd tell them. Right?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. Yes.

6 Q. And then at some point did you
7 give them this matrix list to look at so they
8 could tell themselves?

9 A. That's correct.

10:09 10 Q. Do you remember about when that
11 change was made?

12 A. I don't have -- I don't remember
13 when I gave them the matrix. It wasn't this
14 one. It was an older version.

15 Q. Were these five CPUs obsolete
16 already in the version that you gave them?

17 A. Yes.

18 Q. Do you remember if it was
19 definitely before 2013 or it might have been
10:10 20 after 2013? Just trying to narrow it down.

21 A. It would have been before 2013.

22 Q. And sorry to be boring, but do
23 you remember if it was definitely before 2012
24 or if it might have been after 2012?

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1 A. I honestly don't remember.

2 Q. So, first I'd like to talk to
3 you about the time period before you gave the
4 list to the members of the Practice
5 Relationship Management Team, whenever that
6 was before they had a matrix.

7 A. Mm-hmm.

10:11

8 Q. When a practice's system needed
9 service were there times when its CPU would
10 be replaced?

11 A. Of course.

12 Q. And would that be one instance
13 where the old CPU, if it was obsolete, would
14 be collected?

15 A. Yes.

16 Q. Other times a practice might
17 shut down and just cease operating. Right?

18 A. Correct.

10:11

19 Q. And they would call to cancel
20 the service?

21 A. That's right.

22 Q. Is that another example of a
23 time when the old CPU would be collected?

24 A. Yes.

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1 Q. And if the CPU was collected by
2 a vendor or shipped back by any means and it
3 was obsolete, would it then be destroyed?

4 A. Yes.

5 Q. Would those instructions usually
6 be done by the vendors?

7 A. By Contingent, by the warehouse.

8 Q. By the warehouse. Who's Linda?

9 Is there a Linda R. who has something to do

10:12 10 with the destruction of obsolete CPUs,

11 Russel or --

12 A. Russel, yes.

13 Q. What is her position?

14 A. She works on the installation

15 team.

16 Q. Is she a Patient Point employee?

17 A. Yes.

18 Q. Does she interact with the

19 vendors?

10:12 20 A. Yes.

21 Q. Does she sometimes give them
22 instructions about what to do with CPUs?

23 A. Sometimes.

24 Q. At other times do you give

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1 instructions to the vendors about what to do
2 with CPUs?

3 A. Yes.

4 Q. Does the Practice Relationship
5 Management Team ever interact directly with
6 the vendors?

7 A. Honestly, at this point I don't
8 -- I don't know.

9 Q. Could be but maybe they don't?

10:13 10 A. Most likely not.

11 Q. Does FSD ever communicate
12 directly with representatives of doctors
13 offices?

14 A. Yes.

15 Q. Do you communicate directly with
16 representatives of doctors offices sometimes?

17 A. Yes.

18 Q. What other members of FSD would
19 communicate directly with doctors offices?

10:13 20 A. Any member of the team would.

21 They have to to troubleshoot.

22 Q. FSD includes service and
23 troubleshooting of systems?

24 A. That's correct.

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1 Q. How large is the team?

2 A. There are six members. Well,
3 I'm sorry. There's eight members.

4 Q. Do those -- are some of them
5 technicians?

6 A. That's correct.

7 Q. Do the technicians visit the
8 doctors offices sometimes?

9 A. Occasionally locally they do.

10:14

10 Q. Usually, however, a vendor would
11 be used to physically go to a doctor's office
12 to troubleshoot. Right?

13 A. That's correct.

14 Q. Over 90 percent of the time?

15 A. Yes.

16 Q. Still talking about the time
17 period before the Practice Relationship
18 Management Team was given a copy of the
19 matrix as it existed at that time, I'd like
10:15 20 to ask you a few more questions. Was your
21 expectation that before they instructed a
22 representative of a doctor's office what to
23 do with obsolete equipment that they would
24 communicate with you?

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1 A. Yes.

2 Q. Will that normally happen by
3 e-mail?

4 A. It would be an e-mail, a phone
5 call or sometimes they just stop by my desk,
6 yes.

7 Q. About how many obsolete CPUs
8 were out there somewhere in the field at that
9 time?

10:16 10 MR. BERNAY: Object to the form.
11 You can answer.

12 A. At what time in particular?

13 Q. At the time, say, the year
14 preceding when this matrix that's been marked
15 as Defendant's Exhibit 200 was provided to
16 the Practice Relationship Management Team.

17 MR. BERNAY: Object to the form.
18 You can answer.

19 A. How many were in the field?

10:16 20 Q. Obsolete.

21 A. Obsolete?

22 MR. BERNAY: Same objection.

23 A. I could -- I have no idea.

24 Q. It would be over a thousand.

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1 Right?

2 A. Several hundred. We replace
3 them pretty quickly, but several hundred, at
4 least.

5 Q. So, at that time, before the
6 matrix was provided to the Practice
7 Relationship Management Team, the process
8 was, if they had a question about how a CPU
9 at a practice should be handled, they would
10 get in touch with you in some way and you
11 would give them instructions and then they
12 would take that back to the practice.

13 Correct?

14 A. Yes.

15 Q. So, for instance, if Ms.
16 Lawrence found that a CPU at a practice that
17 was cancelling Healthy Advice's waiting room
18 service had an obsolete CPU, she would ask
19 you, maybe in writing but maybe in person,
20 what to do with the CPU. Right?

21 A. She would ask me if it was
22 obsolete.

23 Q. And you would tell her whether
24 it was obsolete or not?

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1 A. That's correct.

2 Q. And she would give her own
3 instructions to the Practice Relationship
4 Management, or excuse me, to the
5 representative of the practice about what to
6 do?

7 A. She would ask me if it needed to
8 come back or not.

10:18

9 Q. Okay. So, if it was obsolete,
10 she would follow up and say, well, does it
11 need to come back or not, and she would ask
12 you that question?

13 A. Yes.

14 Q. And which ones would need to
15 come back and which ones would not?

16 A. All of them needed to come back.

17 Q. So what was the purpose of her
18 asking that question?

10:18

19 A. If -- sometimes the practice
20 liked to keep them.

21 Q. And sometimes the Practice
22 Relationship Management Team would make a
23 decision to allow that to happen. Right?

24 MR. BERNAY: Object to the form.

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1 Q. That had to go to Heather
2 McGauvran at the time?

3 MR. BERNAY: Same objection.

4 A. Sometimes a practice would like
5 to keep them because they would give -- they
6 would keep the old computers and they would
7 like to donate them to, for instance, a
8 school or something like that. They knew we
9 weren't going to do anything with them. So
10:19 10 they take them and they donate them to a
11 school, for instance. Sometimes they keep
12 them for salvage. Sometimes they just ask to
13 keep them and they keep them on the wall to
14 play programings. For instance, if they were
15 cancelling out they'd keep them and they'd
16 play the programming, even though it couldn't
17 update, just to have something on the wall.
18 If they took responsibility for getting rid
19 of it or destroying it, we would allow them
10:20 20 to keep them.

21 Q. When you said that sometimes --
22 well, first, did you talk to the practices
23 directly about these reasons that they wanted
24 to keep them or was that something that was

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1 communicated to you by the member of the
2 Practice Relationship Management Team?

3 A. Both.

4 Q. Both in every case or sometimes
5 you would speak directly and sometimes they
6 would tell you?

7 A. Sometimes I would, sometimes
8 they would.

9 Q. So you've encountered personally
10 each of the reasons for keeping a CPU that
11 you just listed?

12 A. That's correct, each.

13 Q. Sometimes a practice would want
14 to keep the CPU for salvage, you said?

15 A. Yes. They just wanted it,
16 they --

17 Q. To use as they needed to use it?

18 A. Mm-hmm.

19 MR. BERNAY: Object to the form.

20 Q. It's essentially like an IBM
21 tower at the time?

22 A. A Lenovo, yes.

23 Q. A Lenovo is a type of PC?

24 A. That's correct.

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1 Q. So the practice could keep it
2 and run programs on it like you would a
3 personal computer?

4 A. Well, not really, but they
5 thought that they could.

6 Q. And sometimes a practice would
7 actually keep the CPU and play Healthy
8 Advice's programming on the wall but it just
9 wouldn't update?

10:21 10 A. That's correct.

11 Q. So, in that case, the
12 programming would be stuck on that CPU as it
13 existed at the time of the cancel and they
14 could only play it as it existed at that
15 time. Right?

16 A. That's right, until the computer
17 no longer worked.

18 Q. The programming that's on those
19 CPUs is -- let me start over. The loops --
10:22 20 are you familiar with the term "loop"?

21 A. Yes.

22 Q. The Healthy Advice system plays
23 loops of content that might last about a
24 half-an-hour or 45 minutes sometimes on the

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1 screen in the waiting room of a doctor's
2 office. Right?

3 A. That's correct.

4 Q. Those loops are stored on the
5 CPU. Right?

6 A. That's correct.

7 Q. And those are what those doctors
8 offices who kept playing the loops, even
9 though they weren't updated, had on the CPU.

10:23

10 Right?

11 A. That's correct.

12 Q. Now, those loops are not like
13 typical Windows video files. Right? They're
14 some other type of file?

15 A. That's correct.

16 Q. The software that's on the CPU
17 is needed to play the Healthy Advice loops.
18 Right?

19 A. That's correct.

10:23

20 Q. So when the practice kept a
21 PC -- excuse me. When a practice kept a CPU
22 because it wanted to play the same loop over
23 and over instead of getting updates each
24 month, the software and the loops that were

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1 on that PC, that CPU at the time of the
2 cancellation just stayed on the CPU. Right?

3 A. That's correct.

4 Q. The relationship between that
5 practice and Healthy Advice as the network
6 provider ended at that time. Right?

7 A. That's correct.

8 Q. Healthy Advice might down the
9 line try to resell that practice. Right?

10:24 10 A. That's correct.

11 Q. But unless that practice was
12 resold, there was no relationship between the
13 practice and Patient Point or Healthy Advice.
14 Right?

15 A. That's correct.

16 Q. How many times did you
17 personally know of when a practice kept a CPU
18 for that purpose, for playing the loops?

19 A. I honestly couldn't tell you
10:24 20 right now. I've got 150 pickups out there
21 right now and cancellations. I couldn't tell
22 you. And we're talking about years, years
23 gone by. I couldn't -- I honestly couldn't
24 tell you.

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1 Q. Probably more than once or else
2 it wouldn't spring to mind. Right?

3 A. More than once.

4 Q. And would the rate at which
5 practices wanted to keep CPUs stay the same
6 in your experience after this matrix was
7 provided to the members of the Practice
8 Relationship Management Team?

9 MR. BERNAY: Object to the form.

10:25 10 A. I can't answer that question. I
11 don't know.

12 Q. Is there a way that Healthy
13 Advice kept track of, for any given obsolete
14 CPU, whether a practice was allowed to keep
15 it or whether it was handled in some other
16 way?

17 MR. BERNAY: Object to the form.
18 You can answer.

19 A. I have no idea.

10:26 20 Q. It was tracked in terms of
21 here's an obsolete CPU, we're writing it off.
22 Right?

23 A. That's correct.

24 Q. But a write-off could be of a

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1 CPU that was destroyed or a write-off could
2 be a CPU that was lost or a write-off could
3 be a CPU that was obsolete and the practice
4 was allowed to keep it?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. They were all written off as
8 either lost or damaged/disposed. There was
9 no -- no other -- no other way to track it.

10:27 10 Q. Sometimes, however, CMS would
11 include an entry that would record the
12 instructions that were given to the practice.
13 Right?

14 A. Yes.

15 Q. So just in those cases you could
16 tell from CMS what the practice had been told
17 or what the practice had asked to do with the
18 CPU. Right?

19 A. Possibly, yes.

10:27 20 Q. That would be Healthy Advice's
21 best record for any given obsolete CPU about
22 whether the write-off was one that led to
23 destruction or one that led to the practice
24 keeping a CPU?

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1 MR. BERNAY: Object to the form.

2 Q. Is that correct?

3 MR. BERNAY: You can answer.

4 A. If the practice specifically
5 asked to keep it, to keep it on the wall, I
6 would say that the comment was put in there
7 that they asked that, yes.

8 Q. And there's not some other
9 source of that information that would be
10:28 10 better. Right?

11 A. Not to my knowledge.

12 Q. After the matrix that's been
13 marked as Defendant's Exhibit 200 was
14 provided to the Practice Relationship
15 Management Team, those team members would
16 look at the matrix to see if equipment was
17 obsolete. Right?

18 A. Most of the time.

19 Q. So what would happen the other
10:28 20 time?

21 A. "Vida, I lost my matrix."

22 Q. Would be what the team member
23 says?

24 A. (Witness nodding her head.)

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1 Q. And then it would operate like
2 it did before they had the matrix and you'd
3 give them an answer?

4 A. That's correct.

5 Q. But most of the time after they
6 had the matrix they would look at it and see
7 whether it was obsolete. Right?

8 A. Not really.

10:29

9 Q. About what percentage of the
10 time would they make that determination
11 themselves in your experience?

12 A. Maybe ten percent.

13 Q. So you still got a lot of
14 stop-by business, calls and e-mails about
15 this?

16 A. That's correct.

10:29

17 Q. But, you know, there's some
18 portion of the time when a Practice
19 Relationship Management Team member would
20 look at the list, know it was obsolete and
21 then act on that information in some way?

22 A. Yes.

23 Q. And when they did that they
24 would then give instructions to the practice

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1 and sometimes the vendor about the handling
2 of that CPU. Right?

3 A. Normally in cases where the --
4 well, normally what I get from them is cases
5 where the site has moved or the site shut
6 down or the building has been demolished and,
7 "Oh, by the way, your equipment is still
8 there but they're tearing the building down
9 today", or "I'm standing outside the building
10 and it's burning down and, by the way, your
11 equipment is still in it." Those kinds of
12 things -- those are the -- those are the ones
13 that I get from them. Normally they just,
14 they send e-mails to me to let me know the
15 equipment is there and something has happened
16 to it. They're not really letting me know
17 that obsolete equipment is there. Normally I
18 get obsolete equipment notifications when
19 there's service being done and obsolete
20 equipment is being transferred out and new
21 equipment is being transferred in, or a site
22 cancels and obsolete equipment is being
23 transferred out and they're going to do away
24 with the obsolete equipment, all of the

10:30

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1 obsolete equipment is being taken off site by
2 a technician and then being sent to the
3 warehouse.

4 Q. When there is a service issue
5 and there's notification that there's
6 obsolete equipment, that's going to be the
7 time when almost always that obsolete CPU is
8 destroyed. Right?

9 A. That's correct.

10:32 10 Q. It's these situations where it's
11 probably not a service issue but it's a
12 cancellation where sometimes circumstances
13 will lead to the CPU being left at the
14 physician's office?

15 A. That's correct.

16 MR. BERNAY: Object to the form.
17 You can answer.

18 A. I'm sorry.

19 Q. You said sometime in 2012 or
10:32 20 earlier there were hundreds of obsolete CPUs
21 in the field. Right?

22 A. That's correct.

23 Q. Do you know how many are left
24 now in the field?

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1 A. There --

2 MR. BERNAY: Object to the form.

3 You can answer.

4 A. We are -- we're proactively
5 replacing them. So there's -- there's just
6 no way for me to know now. I'm so sorry. I
7 just haven't kept up with it.

8 Q. Would it be fair to say that
9 over the nine plus years that you've worked
10 at Healthy Advice and Patient Point there
11 have at least been over a hundred times where
12 the CPU wasn't collected?

13 MR. BERNAY: Object to the form.
14 You can answer if you know.

15 A. I would say that was a fair
16 assessment.

17 Q. And, again, these are not
18 situations where a rogue employee is acting
19 contrary to instructions. These are
20 situations where due to the circumstances a
21 decision is made by the company to allow that
22 CPU to remain at the practice. Right?

23 MR. BERNAY: Object to the form.
24 You can answer.

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1 A. I don't understand rogue
2 employee, but someone decided to leave it,
3 yes.

4 Q. It wasn't left at the practice
5 against instructions by the company.

6 A. That's correct.

7 Q. Correct?

8 MR. BERNAY: We've been going
9 about an hour. Why don't we take a break.

10:34 10 MR. HANKINSON: Okay.

11 (Break taken.)

12 Q. To follow up and try to tie off
13 what we were just talking about before I move
14 on, you had mentioned four situations where
15 CPUs had been allowed to remain at the
16 doctors offices.

17 A. Mm-hmm.

18 Q. When the doctor's office
19 cancelled. Right?

10:50 20 A. Yes.

21 Q. And you had mentioned that the
22 CPUs have been generally handled in
23 accordance with company policy and practice.
24 Right?

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1 A. Yes.

2 Q. So when CPUs are kept by
3 practices to donate to schools, that has been
4 done in accordance with company policy and
5 practice. Right?

6 MR. BERNAY: Object to the form.

7 A. Yes.

8 Q. When CPUs have been kept by the
9 practices so that they can keep showing old
10 loops and play the loops that were on the CPU
11 at the time of the cancellation, even though
12 they're not updating, that has been handled
13 in accordance with company policy and
14 practice. Right?

15 MR. BERNAY: Same objection.

16 A. I'm going to say I don't know if
17 that is necessarily company policy, but I
18 know that it was done with permission of
19 people higher than me. It was done in
20 accordance with goodwill.

21 Q. Because it's a service industry?

22 A. That's right.

23 Q. Similarly, when a practice has
24 asked to keep the computer for salvage, if

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1 you or a customer or Practice Relationship
2 Management Team member has said, "That's an
3 old player", "We don't need it", "Go ahead
4 and hook it up to a computer, do whatever you
5 want with it", that was either done in
6 accordance with policy or with permission of
7 someone at Patient Point who was higher up.
8 Right?

9 A. That's correct.

10:52 10 Q. And when a practice kept a CPU
11 because it took responsibility for destroying
12 it in a fourth sort of situation, that too
13 was done in accordance with company policy or
14 at least with the permission of someone
15 higher up?

16 A. Yes.

17 Q. I'm going to hand you a document
18 marked Defendant's Exhibit 201.

19 (Exhibit 201 was identified.)

10:53 20 Q. I'm going to recommend that and
21 ask you to take the clip off of Defendant's
22 Exhibit 201 and take the first two pages and
23 lay them out in front of you so that they're
24 side by side, and then take the second two

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1 and sort of push -- I'm going to move your
2 water, if that's okay. And sort of push
3 those up ahead of you and leave the bottom
4 two pages and spread those out side by side.
5 First we want the third page and then the
6 fourth page.

7 A. Okay.

8 Q. If you look to your right at the
9 far right-hand column of the second and
10:54 10 fourth page of Exhibit 201, does it appear
11 that CMS comment fields are listed out?

12 A. That's correct.

13 Q. You recognize this format and
14 style of comment as entries in CMS?

15 A. Yes.

16 Q. If we look on the left-hand side
17 but the far right column of those, the first
18 and third page, we see a comment created by a
19 column. Do you see that?

10:54 20 A. Yes.

21 Q. And those all say "VAJ". Does
22 that designate you in CMS?

23 A. Yes, it does.

24 Q. What's the J?

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1 A. That was my ex-husband's last
2 name, Johnson.

3 Q. We need never speak of it again.

4 A. Thank you. He's dead now, by
5 the way. He drank himself to death.

6 Q. I don't know how to react. The
7 far left column is "Location ID". Correct?

8 A. That's correct.

10:55 10 Q. The numbers in the Location ID
11 column are the unique numbers that Patient
12 Point assigns to each doctor's office?

12 A. That's correct.

13 Q. And then the Location Name
14 column would list the names of those doctors
15 offices. Right?

16 A. That's correct.

17 Q. In between those two, it says
18 "Program Code", and examples of program codes
19 are PCN, SCN, CCN and WHN. Are those
10:55 20 different Patient Point networks?

21 A. That's correct.

22 Q. By network we're talking about a
23 group of subscribers to Patient Point's
24 content that sees slightly different loops

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1 because they're geared toward certain
2 practice specialties or primary care. Right?

3 A. That's correct.

4 Q. PCN is Primary Care Network.
5 Right?

6 A. That's correct.

7 Q. Is CCN something to do with
8 cardiology?

9 A. Cardiac Care Network. WHN is
10 Women's Health Network and SCN is Skin Care
11 Network.

12 Q. Looking at the comments on the
13 far right-hand side of Defendant's
14 Exhibit 201, do you recognize these as
15 comments that were in fact created by you?

16 A. That's what it says.

17 Q. If you could read them over, I'd
18 appreciate if you would confirm for me that
19 they're your comments in CMS.

20 A. Yeah. There's enough bad
21 grammar in here that I think it's mine.

22 Q. So is that a yes?

23 A. Yes.

24 Q. Thank you. I'd like to talk to

Vida Albert, 4/11/2014

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1 you a little bit about the vocabulary in the
2 comments. If you look at the first row,
3 there's a -- at the very end of the comment
4 it says "Listed as lost." What does "listed
5 as lost" mean?

6 A. It means it was moved from the
7 -- there's different categories on -- that
8 the components are put in and this was moved
9 in this case from "install" to "lost".

10:58 10 Q. Components are the type of
11 equipment that you track as inventory?

12 A. That's correct.

13 Q. Do those include anything other
14 than what was on that matrix we looked at
15 earlier?

16 A. No.

17 Q. And so there are different
18 categories in -- is it on the serial number
19 list or somewhere else?

10:59 20 A. Yes.

21 Q. So each warehouse vendor has a
22 serial number list?

23 A. That's correct.

24 Q. And "listed as lost" refers to

Vida Albert, 4/11/2014

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1 what a certain component would be categorized
2 as on a certain warehouse vendor's list of
3 inventory?

4 A. That's correct. In this case I
5 had them move it from "install" to "lost".

6 Q. Installed is a description of
7 what?

8 A. Where it is on the Serial Number
9 Report.

10:59 10 Q. And the installed category is
11 intended to mean that the components are at a
12 doctor's office installed in an active
13 system. Right?

14 A. That's correct.

15 Q. Does lost mean that the location
16 of the equipment is unknown?

17 A. That's correct.

18 Q. What different types of unknown
19 -- well, let me start over. Would equipment
11:00 20 that has been stolen be listed as lost?

21 A. Correct. Lost/stolen, yes.

22 Q. Is the category "lost/stolen"?

23 A. Yes.

24 Q. And so any equipment where the

Vida Albert, 4/11/2014

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1 location is unknown would be listed on the
2 serial number lists at the vendors as
3 lost/stolen?

4 A. That's correct.

5 Q. And any case where it was stolen
6 it would be listed as lost/stolen, and in any
7 situation where it wasn't stolen but its
8 location is unknown it would be listed as
9 lost/stolen?

11:00 10 A. Lost/stolen.

11 Q. Yes?

12 A. Yes.

13 Q. If you look at the last row on
14 page one and three, going across the top half
15 of the papers as they're laid out in front of
16 you but the bottom row of that top half, it's
17 row 20, it starts with Location ID 3057214.

18 A. Yes.

11:01 19 Q. The last part of that
20 description says, "List the 19-inch monitor
21 as damaged/destroyed." What is
22 "damaged/destroyed"?

23 MR. BERNAY: Take your time to
24 read the whole comment.

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1 A. That was a mistake. I should
2 have listed it as lost/stolen instead of
3 damaged/destroyed, but because it was a
4 19-inch monitor I probably just keyed in and
5 listed it as damaged/destroyed instead of
6 lost/stolen.

7 Q. And I'm not trying to play
8 gotcha. I just --

9 A. No. I'm just --

11:02 10 Q. If it was correct, what would
11 damage/destroyed mean?

12 A. Damaged/destroyed would mean
13 that it was damaged, destroyed. It was a
14 destroyed item.

15 Q. Would the location of a
16 damaged/destroyed item possibly include both
17 equipment that was sent back to the warehouse
18 and found to be damaged and destroyed and
19 also equipment that was reported to be
11:02 20 damaged and destroyed at a physician's
21 office?

22 A. Yes, it would.

23 Q. If we look on what I'm calling
24 row 25, but basically if you march down from

Vida Albert, 4/11/2014

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1 the row we were just looking at one, two,
2 three, four, five, six to location ID
3 3322415 --

4 A. Yes.

5 Q. -- the location name is
6 Dermatology and Advanced Skin Care. Right?
7 Are we on the same row?

8 A. Yes. 31 July '13.

9 Q. I'm catching up with you.

11:03 10 July 31st, 2013 is the date when you entered
11 your comment. Right?

12 A. Yes.

13 Q. Part of this entry says to mark
14 a certain CPU as damage/disposed. Is that
15 the same as damage/destroyed?

16 A. Yes, it is.

17 Q. That's -- and which is the --
18 what's the name of the category on the
19 warehouse's list?

11:04 20 A. Damaged/destroyed. Do you know
21 how many of these things I type a day?

22 Q. Yeah. So the official term is
23 damaged/destroyed?

24 A. Yes.

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1 Q. So looking back up to the third
2 row from the top, Location 3124112; Location
3 Name, Doctors H. Goldstein and E. Ordorica,
4 do you see that row?

5 A. Yes.

6 Q. Following that row across,
7 there's the reference to "SN change request
8 dated", and then there's a date. What is "SN
9 change request"?

11:04 10 A. Serial number change request.

11 Q. Is that a request that is made
12 to the warehouse vendor to change the
13 category in which it lists a piece of
14 equipment on the vendor's serial number list?

15 MR. BERNAY: Object to the form.
16 You can answer.

17 A. It's -- I send the report twice
18 a month to the warehouse and it's just a
19 collection of items that are moved from one
11:05 20 category to another. And I try to note them
21 in CMS that this is what has happened to this
22 piece of equipment, so that people don't try,
23 you know, don't go looking for it.

24 Q. So, when you say "SN change

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1 request dated February 27th, 2012", that
2 means that --

3 A. It's on that request. I'm
4 sorry.

5 Q. -- you made a report like you
6 just described to the warehouse on
7 February 27th, 2012 listing this piece of
8 equipment and others potentially?

9 A. That's correct.

11:06 10 Q. Would "added to SN change list",
11 if it's in a CMS entry authored by you, mean
12 that you have put this on that report that
13 you then later intend to send to the vendor?

14 A. That's correct.

15 Q. If you say in a CMS entry "Moved
16 to damaged/disposed" or "moved to lost",
17 would that indicate that on your draft report
18 that you're later going to send to the vendor
19 you have changed the category of that piece
11:07 20 of equipment?

21 A. We started doing that report in
22 2000 -- I want to say 2011. So there may not
23 be any before then.

24 Q. Was it done on an individual

Vida Albert, 4/11/2014

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1 equipment basis before then?

2 A. Individual comment basis. I
3 would type the comment and then forward it to
4 accounting and to the warehouse.

5 Q. The comment would go into CMS?

6 A. And then I would e-mail it.

7 Q. There's an option where you can
8 take a comment that you've put in CMS and
9 make it into an e-mail?

11:07 10 A. That's correct.

11 Q. And then that e-mail, you said,
12 would go to accounting and to the vendor who
13 is responsible for the equipment?

14 A. That's correct.

15 Q. And the accounting needs to know
16 about these categorizations because they keep
17 track of these pieces of inventory for tax
18 purposes. Right?

19 A. That's correct.

11:08 20 Q. If a CMS entry says write off a
21 piece of equipment, would that be tax related
22 or is that a more general term?

23 A. That's tax related.

24 Q. Well, let's look at the second

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1 to last row, Location Name, or excuse me,
2 Location Number 3310251; name, Women's Health
3 and Breast Pavilion. Do you see that row?

4 A. Yes.

5 Q. Following that across, the last
6 sentence in the entry is, "If no response to
7 e-mail I am going to write off obsolete CPU
8 and close order." Do you see that?

9 A. Yes, I do.

11:09 10 Q. What did that mean you were
11 going to do?

12 A. That meant that if I got no
13 response to the call I was going to write off
14 the equipment because it was obsolete, spend
15 no more resources to try and track it down or
16 call this person. Sometimes we will call
17 five or six times trying to reach someone who
18 doesn't want to talk to you. Well, have you
19 ever done that?

11:09 20 Q. Yes, I have.

21 A. Trying to reach someone who
22 doesn't want to talk to you, especially with
23 these doctors offices, it can eat up a lot of
24 goodwill. So, I'll put a comment in there

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1 just to remind myself that, okay, I've tried
2 all I'm going to try, and the next time I go
3 to this pickup order to try and get the
4 equipment, that reminds me that I'm not going
5 to try anymore, and then I will put it on
6 this Serial Number Change Report.

7 Q. And so when you say "write off"
8 in this entry, you're talking about putting
9 the obsolete CPU on the change order list?

11:10 10 A. And I will put it in the
11 appropriate category.

12 Q. So "write off" could include
13 lost/stolen and it could include
14 damage/disposed -- excuse me. Let me start
15 over. The term "write off" could mean that
16 you are going to move the component to the
17 category "lost/stolen" or it could mean that
18 you are going to move the component to the
19 category "damaged/destroyed", depending on
11:11 20 the circumstances?

21 A. That's correct.

22 Q. What does "closed the order"
23 mean in a CMS entry authored by you?

24 A. That means that I would close

Vida Albert, 4/11/2014

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1 the order. The order would no longer be open
2 and there would be no more calls made on that
3 order.

4 Q. What's the order?

5 A. The order would be a pickup
6 order. That's an order open in CMS that
7 let's me know that, hey, we're trying to get
8 this piece of equipment picked up.

9 Q. Do the vendors see the CMS
10 entry?

11 A. Yes.

12 Q. Does it pop up as a work order
13 for the vendor's technician, then, when
14 there's an order open?

15 A. This is an order at the
16 warehouse. They have issued a UPS label to
17 try and pick up the equipment. For whatever
18 reason, UPS has not been able to retrieve the
19 equipment. So my job is then to try and find
20 out why the equipment cannot be retrieved. I
21 call the doctor's office sometimes
22 repeatedly, and sometimes you just -- there's
23 nothing you can do. There -- you can't --
24 you can't retrieve the equipment.

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1 Q. And that's when you would close
2 the order?

3 A. If I cannot retrieve the
4 equipment. Sometimes it's a screen,
5 sometimes it's a computer. Sometimes it is
6 -- sometimes it's cables and mounting
7 hardware. In this case, it was an obsolete
8 computer.

11:13

9 Q. And when you decide to finally
10 close the order, you select something in CMS
11 and it let's the warehouse know that, even
12 though it has issued a UPS tag, it can go
13 ahead and stop trying to fulfill that?

14 A. That's correct.

15 Q. What's your record for the
16 number of times that you've called a practice
17 on the phone before going ahead and closing
18 an order?

19 MR. BERNAY: Object to the form.

11:13

20 A. I don't know how to answer that.
21 I have no idea.

22 Q. Do you think you've ever called
23 the same practice more than ten times to try
24 to pick up an obsolete CPU?

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1 A. Yes.

2 Q. But sometimes, as you mentioned
3 earlier, five or six calls would be enough to
4 get the impression that the order ought to be
5 closed?

6 A. Yes.

7 Q. If the practice seems
8 particularly nonresponsive, meaning that the
9 person who picks up doesn't want to talk to
10 you and expresses that to you, would you
11 perhaps close the order after two or three
12 calls?

13 A. I always make at least four
14 calls.

15 Q. So you would always make at
16 least four calls regarding an obsolete CPU
17 and then you would decide whether you have a
18 feeling that more calls would be helpful or
19 whether your feeling is that further calls
20 aren't going to do any good and then you
21 would decide to close the order?

22 MR. BERNAY: Object to the form.

23 A. Pretty much you get a feel as to
24 whether they're going to be helpful or not

Vida Albert, 4/11/2014

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1 and that -- yes.

2 Q. I mean, you've done this for
3 nine years. I bet you have a feel. Right?

4 A. Yes.

5 Q. The -- sometimes you e-mail the
6 physician's office?

7 A. Yes.

8 Q. When would you e-mail as opposed
9 to call?

11:15 10 A. The doctors offices are really
11 busy. Sometimes you can get someone to
12 answer an e-mail at the end of the day as
13 opposed to taking a call any time of day.

14 Q. Are the e-mail addresses
15 typically listed in CMS?

16 A. Yes, they are.

17 Q. Do you have the option in your
18 discretion, as a Patient Point's employee, to
19 choose whether to call or e-mail or both?

11:16 20 A. Yes.

21 Q. Do you always e-mail a practice
22 about obsolete CPUs?

23 A. You betcha.

24 Q. How many times minimum would you

Vida Albert, 4/11/2014

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1 e-mail a practice about an obsolete CPU?

2 A. I'm sorry. Are you asking me
3 how many times would I send an e-mail or how
4 many times would I e-mail as opposed to call?

5 Q. You always e-mail a practice
6 when it has cancelled and its CPU is obsolete
7 but has not been able to be retrieved, and I
8 am asking do you always e-mail multiple times
9 and, if so, how many do you always send?

11:17 10 MR. BERNAY: Object to the form.
11 You can answer if you understand.

12 A. I call four times and I e-mail
13 twice. Does that answer your question?

14 Q. The postman always e-mails
15 twice?

16 A. Twice. So does the grumpy
17 Patient Point lady.

18 Q. Do you treat it the same way as
19 phone calls, in that with every obsolete CPU
11:18 20 that's left at a practice you e-mail at least
21 twice and then you make a decision about
22 whether more e-mails would help or not?

23 A. If they don't answer you after
24 two e-mails, they are not going to answer

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1 you.

2 Q. So that's the maximum number
3 that you would send?

4 A. You -- you don't want to piss
5 them off. Other people have to work with
6 them.

7 Q. So the answer is yes?

8 A. Yes.

9 Q. Is each e-mail and call entered
11:19 10 separately into CMS or not?

11 A. Sometimes. It depends on what
12 kind of time crunch. Sometimes -- sometimes
13 I have so many of these to make that I don't
14 always get all of them in. I try to enter
15 every single one.

16 Q. Now I'd like to go to certain
17 rows here and get a little more detailed
18 about what happened in each instance. If you
19 could look at row, the first row, Location
11:20 20 3443727; Location Name, Access Community
21 Health Network. Do you see?

22 A. Yes.

23 Q. The CMS comment from you
24 regarding that practice says, "Equipment at

Vida Albert, 4/11/2014

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1 this location is a 19-inch monitor", and then
2 it lists a serial number. Right?

3 A. Yes.

4 Q. And an M-51 CPU, and then it
5 lists another serial number. Right?

6 A. Yes.

7 Q. The comment goes on, "Both
8 pieces of equipment are obsolete. There is
9 no reason to retrieve them from the site.

11:20 10 Sending to Sarcom and accounting to have them
11 listed as lost." Right?

12 A. Yes.

13 Q. Now, this was in 2010. Right?
14 So this was a time when you were creating a
15 CMS entry and then e-mailing that entry to
16 accounting and Sarcom. Right?

17 A. That's correct.

18 Q. The CPU that -- oh, and this is
19 -- this practice, Access Community Health
11:21 20 Network, had cancelled its service to use its
21 own patient education programming. Right?

22 A. That's what it looks like, yes.

23 Q. The CPU that was at that
24 practice could not be retrieved. Right?

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1 A. That's what it looks like, yes.

2 Q. So then it was listed as lost
3 and the order would have been cancelled or
4 closed. Correct?

5 A. Right.

6 Q. Sarcom would then know that,
7 even if it had issued a UPS tag, it should
8 stop trying to retrieve this equipment at
9 that point. Right?

11:22 10 A. Yes.

11 Q. I'd like you to look two rows
12 down from there at Location ID 3124112;
13 Location Name, Doctors H. Goldstein and E.
14 Ordorica. Do you see that row?

15 A. Yes.

16 Q. Following that across, we can
17 see that the practice had cancelled the
18 service and the reason that's listed is that
19 it was moving or redecorating. Right?

11:22 20 A. Yes.

21 Q. In February --

22 A. Wait a minute. 3124112?

23 Q. Yes.

24 A. They were under -- no. You're

Vida Albert, 4/11/2014

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1 right. I'm sorry.

2 Q. No worries. It's small.

3 Following that across, you entered a comment
4 in February of 2012. Right?

5 A. Yes.

6 Q. That comment says "CPU" and then
7 it lists a serial number and -- and then it
8 lists another serial number, "Have been moved
9 to damaged/destroyed on SN change request
10 dated February 27th, 2012. This is obsolete
11 equipment that will not be removed from the
12 site." Is that the CMS entry you wrote?

13 A. That's what it looks like, yes.

14 Q. Are both of the serial numbers
15 that are listed in this entry the serial
16 numbers of CPUs?

17 A. The 1S81833 number is a CPU.
18 The other is an obsolete 19-inch monitor.

19 Q. And here is an example of what
20 we were talking about earlier where you had
21 switched to providing a report to the
22 warehouse vendors twice a month and the CPU
23 and the 19-inch monitor that were at this
24 cancelling practice were listed on that

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1 report to be changed from installed to
2 damaged/destroyed. Right?

3 A. That's correct.

4 Q. And you further noted that it
5 would not be picked up from the site. Right?

6 A. That's correct.

7 Q. That was a couple of years ago
8 and you do hundreds of these, but I'll just
9 ask, do you happen to remember the
10 circumstances of this one?

11 A. I do not.

12 Q. Further down, it's about the
13 tenth row in the middle of the page -- I'll
14 give you the Location ID. Or, excuse me,
15 I'll give you the name. Loveland Family
16 Practice, Inc. There's two rows that have
17 that practice name.

18 A. Yes.

19 Q. And this is Location ID 3160991.

20 A. Yes.

21 Q. I'd like to look at the second
22 row that is about that location. This is a
23 practice that cancelled and the reason given
24 was "moving and hassle factor". Correct?

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1 A. Yes.

2 Q. Following across you entered a
3 CMS comment in April of 2012. Right?

4 A. Yes.

5 Q. Your CMS entry about the
6 Loveland Family Practice, Inc. location says
7 that, "A 19-inch monitor and Lenovo CPU", and
8 it lists the serial numbers of both pieces of
9 equipment, "have been listed on SN Change

11:26 10 Report dated April 23rd, 2012. Monitor is
11 damaged/disposed. CPU damaged/disposed.
12 19-inch monitor is obsolete, and the decision
13 was made by management not to retrieve the
14 CPU due to cost involved." Is that correct?

15 A. That's what it says. Yes.

16 Q. Was this Lenovo CPU obsolete at
17 the time?

18 MR. BERNAY: Object to the form.

19 Q. If it helps you, you can refer
11:27 20 to Defendant's Exhibit 200.

21 A. No, it was not obsolete.

22 Q. But there's a certain cost
23 involved in retrieving equipment. Correct?

24 A. Yes, there is.

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1 Q. And in certain situations,
2 depending on the circumstances, a manager at
3 Patient Point might choose, even if a CPU was
4 not obsolete, to not retrieve it from the
5 practice. Correct?

6 A. If the practice will take
7 responsibility for disposing of it, yes. We
8 had a long relationship with this particular
9 practice, so I'm sure that -- I believe her
10 name is Peggy. Loveland Family Practice, I
11 think her name was Peggy, would have agreed
12 to dispose of it.

13 Q. Do you remember Peggy's last
14 name?

15 A. I think her name is Peggy, but I
16 don't remember her last name.

17 Q. Would she have signed something?

18 A. No. We never had anybody sign
19 anything. We just put the comment in CMS.

20 Q. Your best recollection is that
21 someone who may have been named Peggy, and if
22 it was Peggy you're not sure of the last
23 name, you think would have said that she
24 would dispose of the CPU before this entry

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1 would have been made. Right?

2 A. Yes.

3 Q. And that decision was made by
4 management?

5 A. Yes.

6 Q. Do you remember who was the
7 manager who made that decision?

8 A. Honestly, no, I don't.

9 Q. It would have been either Amy
10 Finley or Heather McGauvran. Right?

11 A. I honestly can't say. I
12 honestly do not know.

13 Q. Would that manager have been
14 from FSD or from Practice Relationship
15 Management?

16 A. For all I know it could have
17 been me. I do not know. I do not have a
18 memory like that. I wish I did.

19 Q. Would it have been one of those
20 three sources of management, either you or
21 someone else in FSD or someone in Practice
22 Relationship Management? Are there any other
23 managers who would have made that decision?

24 MR. BERNAY: Object to the form.

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1 You can answer.

2 A. I honestly -- I don't -- I just
3 don't know.

4 Q. Tom McGinnis never stepped in
5 and said "Leave the CPU"?

6 A. I don't think so. No.

7 Q. Do you recall anyone outside of
8 FSD or Practice Relationship Management ever
9 telling you what to do with a CPU in a
10 particular practice?

11 A. No.

12 Q. Do you remember anyone ever
13 following up with the person at Loveland
14 Family Practice, whether it was Peggy or
15 someone else, to verify that the CPU had been
16 disposed?

17 A. No, I don't.

18 Q. Disposed could have included
19 throwing the CPU out or giving it to someone
20 else or donate it to a school. Right?

21 A. I would have no idea what they
22 would have done with it.

23 Q. If you would look at the bottom
24 set of pages, let's count up from the bottom,

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1 one, two, three, four, five, six, seven,
2 eight up from the bottom, there's a Location
3 NCH Medical Group and a Location Number
4 3534284. Do you see that?

5 A. Yes.

6 Q. The NCH Medical Group had
7 cancelled the Patient Point service, and the
8 reason listed is "remodeling/redcoration".
9 Right?

11:32 10 A. Yes.

11 Q. Following that row across, you
12 entered a CMS comment in November of 2013.
13 Right?

14 A. Yes.

15 Q. This CMS entry states "CPU" and
16 then it gives a serial number, "and 26-inch
17 monitor", and then it gives a serial number
18 again, "being destroyed by office and have
19 been moved to damaged/destroyed on SNR

11:32 20 because of timeline. Office has stated that
21 they are demolishing and remodeling office on
22 Monday and will pitch equipment if we are not
23 there in time to remove. There is no time to
24 cost effectively dispatch technician to pick

Vida Albert, 4/11/2014

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1 up equipment. Lenovo is obsolete and monitor
2 is one of our older 26-inch monitors." Did I
3 read that correctly?

4 A. That's what it says.

5 Q. The office essentially gave you
6 a rude ultimatum. Right?

7 A. That's correct.

8 Q. And it was something that would
9 have required measures that are not cost
10 effective to go and retrieve the CPU. Right?

11 A. That's correct.

12 Q. It would have been -- it's much
13 more expensive to send somebody on a rush
14 basis to a particular location. Right?

15 MR. BERNAY: Object to the form.
16 You can answer.

17 A. It would be very expensive to
18 get one of our vendors to send a technician
19 out there to pick up that equipment.

20 Q. How much does that cost?

21 A. It would be probably about two
22 times -- probably about -- probably right
23 around \$600 to get someone to go out there.

24 Q. So that's, you said, nearly two

Vida Albert, 4/11/2014

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1 times or maybe over two times what you would
2 normally pay?

3 A. Yes.

4 Q. So a typical pickup would be
5 more like \$300?

6 A. It would -- a normal pickup
7 would be about \$220, so one-and-a-half to two
8 times what we would normally pay. That's
9 what we call an expedited removal depending
10 on who we send.

11:35

11 Q. Patient Point would not pay for
12 an expedited removal of an obsolete CPU.
13 Right?

14 A. Not normally.

15 Q. And in this case they decided
16 not to. Right?

17 A. That's correct.

18 Q. This was in November of last
19 year. Do you remember this occasion at all?

11:35

20 A. Vaguely.

21 Q. Do you remember who you spoke to
22 at the practice?

23 A. I do not remember who I spoke to
24 at the practice.

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1 Q. A man or a woman?

2 A. I don't remember.

3 Q. Do you remember their tone in
4 giving you the ultimatum?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. I don't remember. I just -- I
8 just vaguely remember the conversation.

11:36

9 Q. Any other details that are not
10 in this CMS entry that are in your mind?

11 A. Just that I -- just that it was
12 more expedient to just let them --

13 Q. Because the CPU and the monitor
14 was obsolete and the monitor was old?

15 A. Yes.

11:36

16 Q. They -- the practice wanted --
17 pardon me. The practice was offering an
18 opportunity to pick up the equipment but
19 didn't care whether you did or not, just
20 wanted to make sure that as of a certain date
21 you knew they were going to be gone or the
22 equipment would be gone?

23 A. Yes. We've gotten calls as
24 people were demolishing their buildings, "By

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1 the way, we're tearing the building down and
2 your equipment is still in it."

3 Q. And this comment was made on the
4 same day that the practice told you about
5 this situation. Right?

6 A. That's correct.

7 Q. So, if I looked at a calendar
8 for 2013 and looked up when the next Monday
9 was, the time in between November 8th, 2013
10 and that Monday would be the amount of time
11 that the practice had given Patient Point an
12 opportunity to pick up the equipment. Right?

13 A. That's correct.

14 Q. Look back to the second row of
15 Defendant's Exhibit 201, Pocahontas Medical
16 Clinic, Location ID 3302235. Are you with
17 me?

18 A. Yes.

19 Q. Pocahontas Medical Clinic
20 actually remained active and you wrote a CMS
21 entry about it on January 11th -- excuse
22 me -- January 31st, 2011. Right?

23 A. That's what it says, yes.

24 Q. Would you go ahead and -- this

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1 was kind of a long one. Would you go ahead
2 and read it and let me know when you're done?

3 A. Okay.

4 Q. Can you tell whether this is
5 about a monitor or a CPU?

6 A. It is about a CPU, an M-42.

7 Q. Is that an obsolete CPU?

8 A. Yes, it is.

9 Q. Do you remember what the Office

11:39 10 Depot was trying to -- how they were
11 involved?

12 A. Somebody had dropped it off at
13 an Office Depot, which sometimes -- some
14 Office Depots take UPS equipment. The
15 tracking number provided by the Office Depot
16 in Jonesboro, Arkansas, I guess it is, none
17 of the tracking numbers seem to be the items
18 that we were trying to find is exactly what
19 it says.

11:39 20 Q. So a member from -- somebody
21 from the practice had said that they dropped
22 this CPU off at this Office Depot, but none
23 of the pickups from that Office Depot were
24 matching the tracking number that you had

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1 been given?

2 A. Actually, since it refers to
3 Christina, it was a Sarcom employee, or a PCM
4 employee.

5 Q. Who dropped it at the Office
6 Depot?

7 A. That's correct.

8 Q. And the reasonable effort here
9 is contacting UPS to see if any of the
11:40 10 pickups from that location were the one that
11 you were looking for?

12 A. That's correct.

13 MR. BERNAY: Object to the form.

14 A. I'm sorry.

15 Q. Does "reasonable effort" refer
16 to any other actions?

17 A. Yes. We put a trace on it with
18 UPS, which would be normal.

19 Q. You had the tracking number and
11:41 20 you asked UPS to trace it?

21 A. To trace it.

22 Q. And that didn't turn up any
23 results?

24 A. That's correct. They then

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1 checked their lost and found. That turned up
2 no results.

3 Q. UPS did?

4 A. Yes. And pretty much that's all
5 they can do. If you can't find it, you can't
6 find it.

7 Q. Move down to -- it's a little
8 bit below the midline of the first set of
9 pages, Maryland Healthcare Associates,
10 Location Number 3117580. Do you see that?
11 The first set of pages. So if you look at
12 the top set of pages --

13 A. 3117580. Yes.

14 Q. Maryland Healthcare Associates
15 was still an active subscriber to the network
16 when you --

17 A. Yes.

18 Q. And you made your comment on
19 June 7th, 2012. Right? Excuse me. You made
20 your comment on June 29th, 2012. Right?

21 A. Yes.

22 Q. This comment indicates that you
23 called the site but no one knew anything
24 about the CPU that was supposed to be

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1 returned. Correct?

2 A. That's what it says, yes.

3 Q. Then it indicates that you were
4 sent to someone else's voicemail at the
5 practice but you didn't understand the name.
6 You left a message. And then it says if the
7 call is not returned that you suggest closing
8 the call and listing the obsolete CPU on an
9 SN Change Report, meaning listing it as lost.
10 Right?

11 A. Yes.

12 Q. These comments appear to be
13 comments that use the word "obsolete". There
14 would be other calls or e-mails potentially
15 that record your interactions with these
16 practices. Right?

17 A. Yes.

18 Q. In any event, after this
19 voicemail your feeling was that reasonable
20 efforts had been exhausted and this CPU
21 should be abandoned at the Maryland
22 Healthcare Associates in 2012?

23 A. Well, that it wasn't going to be
24 able to be picked up, yes.

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1 Q. And that efforts to do so should
2 be stopped. Right?

3 A. Yes.

4 Q. Does Patient Point ever just
5 send someone to a practice to retrieve an
6 obsolete CPU without setting it up with the
7 practice in advance?

8 A. I'm not sure I understand what
9 you mean.

11:45 10 Q. We were discussing earlier that
11 you would make a certain number of calls and
12 a certain number of e-mails, and at some
13 point you would make a decision that efforts
14 should stop in terms of retrieving an
15 obsolete CPU. Right? Yes?

16 A. Yes.

17 Q. My question is are there any
18 times when Patient Point or Healthy Advice
19 has gone to the physician's office anyway,
11:45 20 even if you're not getting a call back or an
21 e-mail back, and picked up the CPU when it's
22 obsolete?

23 MR. BERNAY: Object to the form.
24 You can answer.

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1 A. Absolutely.

2 Q. They have?

3 A. They have, yes.

4 Q. Do you have any sense for how
5 often that happens versus leaving it there in
6 cases of obsolete CPUs when you haven't been
7 able to set up an appointment?

8 A. If there is a technician in the
9 vicinity we will send someone there, keeping
10 in mind that we're trying to keep costs under
11 control. If someone is in the vicinity we'll
12 say, "Can you go by and see if you can find
13 it?" A lot of times the reason that UPS
14 can't pick it up is that the practice doesn't
15 know where it is. At the same time, I'll
16 call five times to a practice and say, "Do
17 you know where this is?" And they'll say,
18 "No. We don't have it. We haven't seen it.
19 We don't know what you're talking about."

20 And then six months from now I'll get a call
21 that says, "This CPU has been here for six
22 months. Why haven't you come to pick it up?"
23 And I'll send UPS and they'll pick it up. So
24 it's been written off as lost or damaged,

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1 disposed, and six months later we pick it up.

2 Q. If the practice gets back in
3 touch?

4 A. If the practice gets back in
5 touch with us. So saying it's written off as
6 damaged, disposed or lost isn't always the
7 final word. Sometimes it miraculously
8 appears because someone trips over it and
9 says, "Oh."

11:47 10 Q. But it is the final word in
11 terms of Patient Point expending time and
12 money to try to get the CPU back. Right?

13 A. Most of the time, yes.

14 Q. All of the time unless the
15 practice gets back in touch. Right?

16 A. Yes.

17 Q. When you say that sometimes even
18 without an appointment an obsolete CPU will
19 have a tech dispatched to try to pick it up
11:47 20 if the tech is in the vicinity, how close
21 does the tech have to be? Are we talking the
22 same city, the same state?

23 A. Generally the same building.

24 Q. And is that something that you

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1 or someone at the vendor notices? I guess my
2 question is how would you know, how would you
3 notice that a tech was going to be in the
4 same building?

5 A. We have a lot of related
6 practices, a lot of practices that will have
7 multiple locations within a same building.

8 Q. Is that the only time when
9 Patient Point or its vendors would notice
10 that a tech is being dispatched to the same
11 building as a place where there's an obsolete
12 CPU that is having trouble being retrieved?

13 A. That would be the most -- that
14 would be the case most often.

15 Q. Can you think of a different
16 circumstance where it's been noticed that a
17 tech is going to be in the vicinity?

18 A. Related locations would be most
19 often. That's -- that's the -- that would be
20 the best case for me.

21 Q. I'm just asking if in your nine
22 years you've encountered a different scenario
23 where that happened?

24 A. I have not.

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1 Q. The technician would still
2 charge money to go to a different room in the
3 same building. Right?

4 A. To pick up a piece of equipment,
5 no.

6 Q. So, if it's essentially free,
7 that's when a tech would be sent after a CPU
8 even if the doctor's office was nonresponsive
9 to calls and e-mails?

11:49 10 MR. BERNAY: Object to the form.
11 You can answer.

12 A. He would charge to take it off
13 site to ship it back to UPS, but he wouldn't
14 charge to pick it up, if that makes sense.

15 Q. Mm-hmm. Yes. The situation in
16 which, even when the doctor's office is not
17 responding to your calls and e-mails, a tech
18 still picks up an obsolete CPU only occurs
19 when the pickup would be free, but there
11:50 20 would be a charge after the pickup for
21 processing the CPU. Do I have that right?

22 A. That's not exactly right. There
23 are times when in frustration I will call the
24 warehouse and tell Liz, "We've got to get it."

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1 Go ahead and send somebody." She'll send
2 them under a minimum charge and they will go
3 and pick up equipment. And they'll pick up
4 all of the equipment that's there. And, in
5 all honesty, it'll be that there's a 26-inch
6 monitor as well as the obsolete CPU but I
7 have them pick up everything.

8 Q. As long as they're there, they
9 might as well pick up everything?

11:51 10 A. Mm-hmm.

11 Q. So that situation, again, would
12 be one in which the pickup of the obsolete
13 CPU isn't causing any more cost over and
14 above just the processing of it after it's
15 being picked up, because the cost is going to
16 be incurred anyway to pick up that monitor
17 that's not obsolete?

18 MR. BERNAY: Object to the form.
19 You can answer.

11:51 20 Q. Right?

21 A. Correct.

22 Q. All I'm trying to get at is
23 Patient Point doesn't send techs to go pick
24 up obsolete CPUs when it's going to cost

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1 money, right, other than just the processing?

2 When the pickup is going to cost money that

3 seems to be where the line is drawn?

4 MR. BERNAY: Objection. You can
5 answer.

6 A. Correct.

7 Q. Would you look at, it's row 16,
8 but look for North Shore Cardiology

9 Consultants.

11:52 10 A. What's the Location ID, please?

11 Q. 3654722.

12 A. All right.

13 Q. This location is North Shore
14 Cardiology Consultants. It's listed as an
15 active location and your comment in CMS was
16 made on April 10th, 2013. Right?

17 A. Yes.

18 Q. Would you review your comment
19 and tell me when you're done and I'll ask
11:53 20 some questions about it.

21 A. All right. I'm done.

22 Q. Thank you. This comment is
23 about a CPU. Right?

24 A. Yes.

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1 Q. Your best information about what
2 happened to this CPU is that it was probably
3 picked up by a UPS driver without a label on
4 it, right, because there's no tracking from
5 the practice to the UPS warehouse?

6 MR. BERNAY: Object to the form.
7 You can answer.

8 A. Yes.

11:54 9 Q. That was your conclusion based
10 on your experience with UPS. Right?

11 A. That's right.

12 Q. Then you say, "Since this is
13 obsolete equipment, I am asking that the
14 pickup order be closed and the CPU moved to
15 damage/disposed." Right?

16 A. That's right.

17 Q. And you had already said that
18 this probably should have been lost, there's
19 just an error. Right?

11:54 20 A. Yes.

21 Q. Setting that aside, you said
22 that you were making this decision since this
23 is obsolete equipment. Is there something
24 that is done to look for equipment at UPS if

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1 it's not obsolete when it's been picked up
2 without a call tag?

3 A. If equipment has been picked up
4 without a call tag and you call obsolete, or
5 -- call obsolete -- you call UPS and you say
6 equipment was picked up without a call tag.

7 They say, "We're very sorry, but since
8 there's no evidence that it was picked up at
9 all, we can't put a trace on it. We can't

11:55 10 look in lost and found. We can't do anything
11 else. So, sorry, but you're on your own."

12 So, since it was picked up without a call tag
13 and since I've been doing this for as long as
14 I've been doing it, I knew that they wouldn't
15 look any further.

16 Q. Was there a time where you were
17 young and naive and thought UPS might look?

18 MR. BERNAY: Object to the form.

11:55 19 A. Yes, there was a time when I was
20 -- there was a time when I was young, but --
21 and there was a time when I thought that I
22 could force them to look, but no, they won't
23 do that. If there's no call tag, no
24 tracking, they won't look.

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1 Q. And maybe the last one before we
2 take a break. If you look at the second to
3 last row of Location Number 3310251, the
4 location Women's Health and Breast Pavilion.
5 Are you with me?

6 A. Yes.

7 Q. This practice is also listed as
8 active and your comment was entered
9 February 21st, 2014. Right?

11:56 10 A. Yes.

11 Q. Your comment says, "I sent an
12 e-mail to Beth Jasper regarding old CPU left
13 at site for UPS pickup. No response to call.
14 If no response to e-mail, I am going to write
15 off obsolete CPU and close order." Did I
16 read that correctly?

17 A. That's correct.

18 Q. Do you remember if there was a
19 response to this call or not or to the
11:57 20 e-mail?

21 A. I do not remember.

22 Q. Your intent, if there was no
23 response, was to close the order. Right?

24 A. That's correct.

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1 Q. And if that happened, Patient
2 Point's efforts to recover this CPU would
3 stop. Right?

4 A. That's correct.

5 Q. Was Beth Jasper the contact at
6 Women's Health and Breast Pavilion?

7 A. Yes.

8 Q. And she apparently had already
9 not responded to your phone call. Right?

11:57 10 A. That's correct.

11 Q. Since this practice is active,
12 there was probably a new CPU that was
13 providing the loops. Right?

14 A. That's correct.

15 Q. And this CPU was left to be
16 picked up by UPS, or at least that's what you
17 were told but that just never made it back.
18 Right?

11:58 19 MR. BERNAY: Object to the form.
20 You can answer.

21 A. That's correct.

22 MR. HANKINSON: Do you want to
23 take a break?

24 MR. BERNAY: Yeah. It's getting

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1 close to 12:00. Let's take a break.

2 (Lunch break taken from 12:00 p.m. to
3 1:00 p.m.)

4 Q. Thank you for coming back this
5 afternoon. I appreciate your time. I'm
6 sorry we're going a little bit later than
7 originally anticipated, but thank you. I'd
8 like to hand you what we are marking as
9 Defendant's Exhibit 202. Are you familiar
01:04 10 with the type of document that is Defendant's
11 Exhibit 202?

12 (Exhibit 202 was identified.)

13 MR. BERNAY: Take a look -- have
14 a look at the entire document.

15 (There was a brief pause.)

16 A. No. Actually, I'm not.

17 Q. If you look at the first page,
18 row seven, there's a reference of -- there's
19 a reference to a Lenovo CPU. It looks like
01:06 20 maybe there's a partial serial number. Do
21 you see the row I'm speaking of?

22 A. Yes.

23 Q. Do you have any idea who would
24 have created this document?

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1 A. No.

2 Q. It's not something that you use
3 in your business?

4 A. Not me personally, no.

5 Q. Can you tell if the information
6 that's in this row seven is accurate, whether
7 that Lenovo CPU is indeed obsolete?

8 A. Yes, it is.

9 Q. You can tell that and it is
10 obsolete?

11 A. It is obsolete.

12 Q. I'm going to hand you what we
13 are marking as Defendant's Exhibit 203. Do
14 you know if you have ever seen this CPU that
15 is depicted in the photos that are
16 Defendant's Exhibit 203?

17 (Exhibit 203 was identified.)

18 MR. BERNAY: Object to the form.
19 You can answer.

20 A. I don't know off the top of my
21 head, no.

22 Q. Do you see the CPUs in the
23 ordinary course of your duties?

24 A. I see different ones. I don't

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1 see -- I wouldn't know specifically unless I
2 labeled them myself or something.

3 Q. Right. You see the different
4 types of CPUs come through?

5 A. Yes.

6 Q. So, ignoring whether this is a
7 particular serial number or from a particular
8 location, do you know what type of CPU this
9 is, just looking at the picture itself, not
10 the Post-It note?

11 A. This is a Lenovo.

12 Q. Can you tell if it is obsolete
13 or not?

14 A. This is an obsolete Lenovo, yes.

15 Q. You can determine that from the
16 photo? You're not using the serial number.
17 Correct?

18 A. From the shape and the size of
19 it, the outside case, it would appear to be
20 an obsolete Lenovo, yes.

21 Q. Since the time that Mike
22 McAllister first told you that certain Lenovo
23 CPUs were going to be considered obsolete, if
24 an obsolete CPU like this came back to

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1 Patient Point, the practice would be to
2 destroy it. Correct?

3 A. That is correct.

4 Q. Is there a cost that's
5 associated with destroying a CPU like that?

6 A. Yes.

7 Q. An obsolete CPU like this would
8 not be reused. Correct?

9 A. No, it would not.

01:09 10 Q. So it actually costs Patient
11 Point money to get one of these obsolete CPUs
12 in the door because then it's disposed.
13 Correct?

14 MR. BERNAY: Object to the form.
15 You can answer.

16 A. It costs in that it is handled
17 by our warehouse. They then -- they then
18 send it out to be destroyed or they destroy
19 it there. I'm not a hundred percent clear on
01:10 20 the process.

21 Q. In any event, Patient Point pays
22 to have this destroyed rather than finding
23 this to be something valuable that it can use
24 going forward?

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1 A. That's correct.

2 MR. BERNAY: I just note for the
3 record these are the photos that you took
4 when you were at the office about a year ago.
5 Is that correct?

6 MR. HANKINSON: I don't remember
7 when it was, but yes. I believe I was in a
8 conference room over there. That's when we
9 first met. Good times.

01:11 10 Q. I would like to hand you what we
11 are marking as Defendant's Exhibit 204.
12 Please take a minute and review this whole
13 e-mail chain and let me know when you're
14 done.

15 (Exhibit 204 was identified.)

16 (There was a brief pause.)

17 A. All right.

18 Q. Does this e-mail chain appear to
19 be an example of what you described earlier
01:13 20 where a CMS comment can be clicked or
21 selected in some way to make it into an
22 e-mail?

23 A. Yes.

24 Q. This is how the CMS comments

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1 look when they're made into an e-mail and
2 sent internally at Patient Point. Right?

3 A. Yes.

4 Q. What is an EA as referred to in
5 this e-mail chain?

6 A. Enrollment Agreement.

7 Q. Are you aware that at a certain
8 point in Healthy Advice's history EAs were
9 not kept electronically and then after that
10 time they were kept electronically?

11 A. Yes.

12 Q. Do you know about when that time
13 was?

14 A. I believe that they were
15 converted in 2000 -- I believe that they were
16 converted in 2009.

17 Q. And sometimes there are EAs that
18 when that was converted were not put into the
19 electronic storage for whatever reason?

20 A. Some were not scanned in.

21 Q. The CPU that is discussed in
22 this e-mail chain is an obsolete one.
23 Correct?

24 A. I would say from the date that

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1 that's what they have indicated here.

2 Q. It's a Lenovo. Right?

3 A. Yes.

4 Q. Lori Smith and Heather McGauvran
5 are in the Practice Relationship Management
6 Team. Right?

7 A. That's correct.

8 Q. Ms. Smith writes to Ms.
9 McGauvran that because there's not an EA on
01:16 10 file it seems silly to push the issue. Do
11 you see that?

12 A. Yes.

13 Q. The issue that she is discussing
14 is getting the CPU that is obsolete returned
15 to Healthy Advice. Right?

16 A. The way I read it, yes.

17 Q. Does this refresh your memory at
18 all about whether the matrix had been
19 provided to the Practice Relationship
01:16 20 Management Team at some point before December
21 of 2011?

22 MR. BERNAY: Object to the form.

23 A. It doesn't indicate to me
24 whether it had or had not.

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1 Q. It's possible that Ms. Smith or
2 Ms. McGauvran spoke to you about the CPU, but
3 it's also possible that they made this
4 decision looking at the matrix on their own?

5 A. It's possible.

6 Q. Either one of those is possible?

7 A. Yes.

8 Q. Would you disagree with their
9 handling of this CPU if you had been on this
10 e-mail chain?

11 A. I don't think so, no.

12 Q. In part they're basing their
13 conclusion based on the lack of an Enrollment
14 Agreement. Right?

15 MR. BERNAY: Object to the form.

16 A. Exactly.

17 Q. Now I would like to hand you
18 what we are marking as Defendant's
19 Exhibit 205. Please take a moment to read
20 this all the way through and let me know when
21 you're done.

22 (Exhibit 205 was identified.)

23 (There was a brief pause.)

24 A. All right.

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1 Q. This appears to be a CMS entry
2 by Amy Finley that was turned into an e-mail
3 to you on March 8th, 2012. Do I have that
4 correct?

5 A. Yes.

6 Q. It discusses the location
7 Physicians Affiliated Care, Location Number
8 3416535. Correct?

9 A. Yes.

01:19 10 Q. In her CMS entry, which she
11 forwards to you, Ms. Finley states that she
12 told someone from Physicians Affiliated Care
13 that since Healthy Advice is unable to
14 schedule a technician by the time that
15 Physicians Affiliated Care wanted the
16 technician to be scheduled, "We are granting
17 you permission to remove the equipment from
18 the wall." Is that accurate?

19 A. That's what it states.

01:20 20 Q. You rely on CMS entries from
21 members of the Practice Relationship
22 Management group in making decisions in your
23 ordinary business. Right?

24 A. Yes.

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1 Q. Do you generally find them to be
2 reliable enough to make those decisions for
3 purposes of business?

4 A. Yes.

5 Q. Then Ms. Finley indicates in her
6 CMS entry that she has told the practice, "We
7 will be in touch next week to arrange the
8 retrieval of the equipment." Right?

9 A. Yes.

01:20 10 Q. Now, at that point it looks like
11 Ms. Finley leaves off of her summary what she
12 told the practice and indicates some next
13 steps. She says, "Next steps." Does "F/U"
14 mean follow up?

15 A. Yes.

16 Q. "Next steps. Follow up with
17 Vida to see if we can write off the equipment
18 and then contact Jennifer next week to let
19 her know what to do with the equipment." Is
01:21 20 that in line with your expectation of how
21 someone in Practice Relationship Management
22 would handle this type of situation?

23 A. Yes.

24 Q. There's nothing out of the

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1 ordinary here?

2 A. No.

3 Q. Then Ms. Finley forwards her CMS
4 entry to you and asks you, "Should we just
5 write this equipment off versus sending
6 someone to retrieve it? Just let me know.
7 Thanks, Amy." Right?

8 A. Right.

01:21

9 Q. So either the equipment that is
10 at Physicians Affiliated Care will be written
11 off and no one will retrieve it or Patient
12 Point will arrange to send somebody to
13 retrieve it. Right?

14 A. Right.

15 Q. I'd like to hand you what we're
16 going to mark as Defendant's Exhibit 206.
17 Please go ahead and read this all the way
18 through and then let me know when you're
19 done.

01:22

20 (Exhibit 206 was identified.)

21 (There was a brief pause.)

22 A. All right.

23 Q. The e-mail that is Defendant's
24 Exhibit 206 is also a CMS entry by Amy

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1 Finley. Correct?

2 A. Yes.

3 Q. This is also about Physicians

4 Affiliated Care, Location Number 3416535.

5 Correct?

6 A. Yes.

7 Q. This CMS entry is from

8 June 2012, a few months after the March 2012

9 e-mail that we just discussed in Defendant's

01:24 10 Exhibit 205. Right?

11 A. Yes.

12 Q. In the June 2012 CMS entry, Ms.

13 Finley indicates that she gave the practice,

14 Physicians Affiliated Care, permission to

15 remove the equipment from its office. Right?

16 A. Yes.

17 Q. Ms. Finley told Physicians

18 Affiliated Care that it is not liable for the

19 equipment being removed and they do not need

01:25 20 to return the equipment to Healthy Advice.

21 Right?

22 A. Yes.

23 Q. And that's after hearing from

24 Jennifer at Physicians Affiliated Care that

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1 the practice can't use the old PCM equipment.

2 Correct?

3 A. Yes.

4 Q. Physicians Affiliated Care was

5 cancelling the program in order to go with

6 Diabetes Health Network. Correct?

7 A. Yes.

8 Q. I'd like to hand you what we're

9 marking as Defendant's Exhibit 207. Please

01:26 10 take whatever time you need to review this.

11 I will say that my impression is the bottom

12 CMU entry is the same as Exhibit 205 but then

13 it gets different from there on out.

14 (Exhibit 207 was identified.)

15 (There was a brief pause.)

16 A. All right.

17 Q. The e-mail chain that is

18 Defendant's Exhibit 207 happened in between

19 the e-mail at Defendant's Exhibit 205 and the

01:27 20 CMS entry from Ms. Finley that is Defendant's

21 Exhibit 206. Right?

22 A. It appears that way.

23 Q. This e-mail chain that is

24 Defendant's Exhibit 207 was in April in

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1 between the March and the June entries that
2 we just discussed. Right?

3 A. That's the way it looks, yes.

4 Q. In the e-mail chain that is
5 Defendant's Exhibit 207, Ms. Smith, Lori
6 Smith, essentially confirmed with you that
7 you were aware of the equipment at Physicians
8 Affiliated Care and Amy Finley's intent to
9 follow up with you. Right?

01:28

10 A. Yes.

11 Q. So, between the time in March of
12 2012 when Ms. Finley stated that she intended
13 to follow up with you and the time in June
14 when she told the practice that it could
15 remove the CPU from the wall and that it
16 wasn't liable for it, the decision was made
17 to go ahead and write that CPU off and not
18 retrieve it. Right?

19 MR. BERNAY: Object to the form.

01:28

20 You can answer.

21 A. It would appear so, yes.

22 Q. Do you have any independent
23 recollection of this particular CPU?

24 A. No, I don't.

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1 Q. Can you picture any scenario in
2 Patient Point's business where there would be
3 a different explanation for these three
4 documents than what we just discussed?

5 A. No, not really.

6 Q. So we're pretty sure that's what
7 happened --

8 A. Yes.

01:29

9 Q. -- that Physicians Affiliated
10 Care switched to Diabetes Health Network.
11 Right?

12 A. That's what it says here.

13 Q. Are there occasions when
14 practices inform Patient Point that the CPU
15 that Patient Point has put in their waiting
16 room has been stolen?

17 A. Yes.

18 Q. About how often does that
19 happen?

01:30

20 A. Probably once every two,
21 three months, more often around Christmas.

22 Q. That's very sad. What happens
23 -- what do you do when you're informed by a
24 practice that a CPU has been stolen?

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1 A. Usually it's stolen in
2 conjunction with the monitor. It used to
3 happen more often before, you know, the
4 larger monitors came out, but normally it's
5 stolen in conjunction with a 32-inch monitor.
6 We ask for a police report. We provide
7 information requested by the police,
8 generally the serial numbers and the model
9 types and the color. We put the police
10 report in CMS, attach it in CMS, and at that
11 time we decide whether or not it's worth the
12 risk to go ahead and reinstall it at that
13 location or not.

14 Q. What sorts of factors play into
15 the decision about whether it's worth the
16 risk?

17 A. Well, in general, has more than
18 one been stolen from this location or not.
19 Sometimes, if it's a high crime area, we
20 decide not to install there again. Sometimes
21 the practices will say, "Okay. We've had one
22 stolen. We don't want anything out in the
23 waiting area that's going to attract more
24 trouble. So don't install it here again."

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1 So things like that.

2 Q. Does Patient Point ask for any
3 additional security measures to be taken in
4 instances where it decides to go ahead and
5 reinstall a CPU?

6 A. We can't ask that of a practice.

7 Q. Why do you say that?

8 A. That's not their business. That
9 is not what they do. They take -- they're a
10 doctor's office. They have certain measures
11 that they take to be safe to begin with.

12 We're putting this in their waiting area and
13 we have to trust that they're doing

14 everything to keep safe that they can. They
15 get it stolen twice, generally we realize
16 it's, you know, it's not a safe place for it
17 to be, but we're not asking them to do

18 anything else to be safe. Most of them have
19 some type of security system. Doctors

20 offices as a rule do have, especially if
21 they're one that has drug samples and that
22 sort of thing on hand. So we're not asking
23 them to do anything special, no.

24 Q. I'm handing you what's been

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1 previously marked as Defendant's Exhibit 31.
2 Flip through it. I'm not going to ask you
3 about everything on here. Actually, could I
4 impose on you to hand me back those copies?
5 It looks like something additional was copied
6 at the end of each one. Sorry about that.
7 Oh. No. Yours are clean. Just mine. Sorry
8 about that. So, as I was saying, please go
9 ahead and flip through this just so you kind
01:35 10 of generally get a sense of it, but don't
11 read it all at this point.

12 (Exhibit 31 was identified.)

13 MR. BERNAY: Maybe it would be
14 easier if you direct her to a particular
15 comment that you want. It's a long document.

16 Q. Sure. I just wanted to give her
17 a minute. The rows and columns in
18 Defendant's Exhibit 31 are pieces of
19 information that were taken from CMS and
01:35 20 produced to us by Patient Point's attorneys.
21 Do you understand what I'm saying?

22 A. Yes.

23 Q. I'm going to ask you to look at
24 certain rows. Unfortunately, I don't think

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1 that these rows are in location number order.

2 So we'll do the best we can. If you would,

3 I'd like you to flip to the 15th page.

4 MR. BERNAY: If you give us the
5 competitor and the stage, the cancel date or
6 the stage date, that might be the best way to
7 find it.

8 Q. Health Monitor, date
9 August 10th, 2011. Ms. Albert, do you see a
10 row that begins with Location Number 3555656
11 and has Location Name BFCC Urban Strategies?

12 MR. BERNAY: Hold on.

13 A. What's the location?

14 MR. BERNAY: Right there, I
15 think.

16 A. Okay.

17 Q. 3555656.

18 A. 656.

19 Q. Okay. Take a look at the
20 comment on this row.

21 A. All right.

22 Q. The CPU at the practice BFCC
23 Urban Strategies which had cancelled to
24 switch to Health Monitor was written off in

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1 this instance. Correct?

2 A. That is what it says.

3 Q. This is an example, then, of
4 Patient Point deciding not to retrieve a CPU
5 that has been misplaced. Is that right?

6 A. It says they could not find it,
7 that the equipment was misplaced, yes. It
8 says they believe it was disposed of.

01:39

9 Q. When you say "they believe",
10 you're talking about the person who wrote
11 this CMS entry?

12 A. Yes.

13 Q. The practice did not -- this
14 entry does not say that the practice told
15 them that. It says that "they" believe that.
16 Right?

17 A. Yeah. Whoever wrote this
18 believed it was disposed of.

01:39

19 Q. But the practice simply said
20 they cannot find it, correct, Ruth Richmond
21 at the practice?

22 A. That's correct.

23 Q. Is there any policy or practice
24 in place, once a representative of a practice

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1 says that they cannot find a CPU, to take any
2 extra step to locate it, or is that pretty
3 much the end of it?

4 MR. BERNAY: Object to the form.

5 A. We're not going to go into a
6 practice and accuse them of lying, no.

7 Q. And when a practice cancels the
8 service, it ends its relationship with
9 Healthy Advice. Right?

01:40 10 A. That's correct.

11 Q. From that point on the
12 practice's obligation towards Healthy Advice
13 stops?

14 A. That's correct.

15 MR. BERNAY: Object to the form.

16 A. I'm sorry. That's correct.

17 Q. I'm going to ask you to flip
18 pretty deep into this, and I'll try to use
19 the approach that Mr. Bernay identified. So
01:41 20 quite some ways into this document there will
21 be a row where the competitor in the middle
22 is listed as "Television", and the date of
23 the -- the stage date will be November 30th,
24 2012. Let me know when you find it.

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1 A. Okay. What's the location
2 number?

3 MR. BERNAY: Sorry.
4 November 2012?

5 Q. So the location name when you
6 get there will be ETSU Family Medicine
7 Associates.

8 MR. BERNAY: What's the date
9 again?

01:42 10 MR. HANKINSON: November 30th,
11 2012. It's only five pages from the back of
12 the document.

13 MR. BERNAY: Okay. I found it.
14 Hold on. Let's see. There are a lot of them
15 that are cancelled on the 30th. There we go.

16 A. What's the name of it? I'm
17 sorry.

18 Q. ETSU Family Medicine Associates.

19 A. Okay.

01:42 20 Q. Practice Location Number
21 3236627. Do you see that row?

22 A. I do.

23 Q. This practice cancelled in favor
24 of using television in its waiting room.

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1 Correct?

2 A. Yes.

3 Q. Go ahead and read the complete
4 comment entry and let me know when you're
5 finished.

6 A. All right.

7 Q. Now, the comment says that the
8 office came up with their own patient
9 education program. Right?

01:43 10 A. Yes.

11 Q. Offices sometimes do that, they
12 go ahead and come up with their own content
13 to show on loops in their own waiting rooms?

14 A. Yes.

15 Q. And that's, in a sense,
16 considered a competitor of Healthy Advice
17 because the office then doesn't become part
18 of the circulation numbers of Healthy
19 Advice's network. Right?

01:43 20 MR. BERNAY: Object to the form.
21 You can answer.

22 A. Yes.

23 Q. This CMS entry indicates that
24 the cancel is being fielded to Amy Finley,

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1 and the person who wrote it let the practice
2 know that they may keep the 19-inch monitor
3 and do whatever they would like with the
4 equipment. Right?

5 A. Yes.

6 Q. And then it says, "Sent info to
7 Vida to write off equipment." Right?

8 A. Yes.

01:44

9 Q. This would be an occasion when
10 the Practice Relationship Management Team
11 member made the decision about what the
12 practice could do with the CPU and then
13 informed you about it. Right?

14 A. Well, not knowing who wrote the
15 comment, I don't know if it was a member of
16 the Relationship Management Team, but they
17 received the information from the FSD office,
18 and whoever did, yes, they fielded it to Amy
19 Finley and they let me know that the
20 equipment was being written off.

01:45

21 Q. In November 2012 was this in
22 accordance with Patient Point's policies and
23 practices about obsolete CPUs?

24 MR. BERNAY: Object to the form.

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1 You can answer.

2 A. This is what happened in this
3 particular instance. I can't speak to the
4 particular policy. Yes.

5 Q. Is there anything in this CMS
6 entry that would lead you to go back after we
7 leave today and tell somebody that the person
8 who did this should be reprimanded or
9 disciplined in any way?

01:45

10 A. No.

11 Q. There's nothing in here that
12 would indicate that something went wrong here
13 such that it needs to be corrected?

14 A. No.

15 Q. Look three rows down from there
16 at the location First Medical Center 3556762.
17 Are you there?

18 A. Yes.

01:46

19 Q. Go ahead and read the complete
20 comment entry and then let me know when
21 you're done.

22 (There was a brief pause.)

23 A. All right.

24 Q. In this cancelled First Medical

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1 Center practice there would have been a full
2 set of equipment to pick up, potentially.
3 Right?

4 A. Yes.

5 Q. So in the last sentence where
6 the person who wrote this entry says, "Since
7 we are not going to get anywhere here and
8 this might not be a DHN removal, e-mail Vida
9 to determine if the monitor is worth picking
10 up." When they refer to "monitor" is that
11 essentially because the CPU was assumed to
12 have no value, or do they just kind of mean
13 generally equipment?

14 A. I would have no way of knowing
15 what this person meant. To me it looks like
16 they were all around the bend with these
17 people and probably very frustrated. I
18 actually don't -- I actually don't have any
19 idea what the intent of this statement is.

20 They wanted me to do something, but
21 probably -- I would say that there was
22 probably a couple of follow-up phone calls
23 made after I got the e-mail.

24 Q. All right. Flip two pages and

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1 look at the top row. It should be Piedmont
2 Physicians Group, Location 3146462. Are you
3 there?

4 A. Yes.

5 Q. Read through that entry and let
6 me know when you've finished.

7 (There was a brief pause.)

8 A. All right.

9 Q. Is this cancellation by the
01:50 10 Piedmont Physicians Group another example of
11 a member of the Practice Relationship
12 Management Team deciding not to retrieve a
13 CPU from a cancelling practice?

14 A. It says a 19-inch monitor. It
15 doesn't say anything about the CPU.

16 Q. It does say they may do with the
17 equipment as they please. Right?

18 A. It says, "E-Mail Vida the
19 equipment."

01:50 20 Q. Just a couple of sentences
21 before that.

22 A. It mentions the 19-inch monitor
23 several times, but it doesn't specifically
24 say the CPU. I don't want to assume

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1 anything, but it appears to be an instance
2 where they kept the 19-inch monitor. I can't
3 speak to the CPU. I would have to look at my
4 records to know for sure.

5 Q. If you assume that by
6 "equipment" they meant CPU and that when you
7 check your records you find, you found that
8 the CPU is obsolete and the decision was made
9 not to retrieve it -- do you understand those
10 assumptions?

11 A. Yes.

12 Q. If those assumptions are true,
13 would the handling that is described in this
14 entry be appropriate under Patient Point's
15 practices and policies at the time?

16 MR. BERNAY: Object to the form
17 of the question. You can answer.

18 A. The way that it's phrased isn't
19 exactly the way that I would like to see it
20 or the way that we would have liked this
21 person, whoever it is, to put it in there.
22 Normally we would ask them to take
23 responsibility for the equipment, not to do
24 with it as they please, but to take

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1 responsibility for the equipment, not do with
2 it as they please.

3 Q. You say ordinarily but then
4 there would be certain times where this would
5 be okay but ordinarily it wouldn't?

6 A. Normally we ask them to take --
7 we would ask them to take responsibility for
8 the equipment and that's the way it should be
9 phrased. If they say that they will take
01:53 10 responsibility for the equipment, then they
11 can have it, meaning that they would properly
12 dispose of it.

13 Q. Or continue to use it. Right?

14 A. Mm-hmm. Yes. Sorry.

15 Q. And if this CMS entry indicated
16 that the practice had agreed to keep the
17 equipment and possibly reuse it, then that
18 would be in accordance with the policy and
19 procedure at the time?

01:54 20 A. Yes.

21 Q. And, again, the practice
22 wouldn't be required to sign anything
23 promising that. Correct?

24 A. No.

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1 Q. It would -- my question is --
2 pardon me. Bad question. Would the practice
3 be required to sign anything?

4 A. No.

5 Q. Would there be any follow-up
6 done to verify how the practice was using the
7 CPU later on?

8 A. No.

9 Q. If you can flip one more page.
01:55 10 Skip that one. All right. You can set aside
11 the Exhibit 31. I'm handing you what's been
12 previously marked as Exhibit 32. These are
13 additional comments and other fields from CMS
14 that were provided by Patient Point's
15 attorneys. Okay?

16 A. Mm-hmm. Yes.

17 (Exhibit 32 was identified.)

18 MR. HANKINSON: Aaron, any good
19 ideas about the best way to direct looking
01:56 20 through this document?

21 MR. BERNAY: It looks like these
22 are arranged by Location ID, so I'd use that.

23 MR. HANKINSON: Okay. Although
24 they start at six and then maybe jump

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1 backwards. We'll try it.

2 MR. BERNAY: It's a six-digit
3 and then it goes to a seven-digit Location
4 ID.

5 MR. HANKINSON: Oh. Okay.
6 Good.

7 Q. Ms. Albert, would you please
8 turn to the row with the Location ID 3000813?

9 A. Is this a test to see if I can
10 count?

11 MR. BERNAY: 3000813.

12 A. 3000813.

13 Q. So that's at the bottom of the
14 page. Please turn to the next page where
15 there's a row at the top that's still 300813.
16 The practice location name is the Endocrine
17 Medical Group. Are you with me?

18 A. Yes, I am.

19 Q. All right. Take a look at that
20 comment and let me know when you're done
21 reading it.

22 A. All right. I am.

23 Q. Is this an example of the
24 Practice Relationship Management Team member

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1 noting that the CPU had not been received and
2 asking you to write it off?

3 A. Yes.

4 Q. And when you write the CPU off,
5 that means that Patient Point ceases trying
6 to retrieve it. Correct?

7 A. That's correct.

8 Q. Please flip down to Location
9 3416535.

01:59 10 A. There's several comments for
11 that location. Which comment are we looking
12 at?

13 Q. Please flip to the second page
14 of that location, and the second row on that
15 page should be -- it says, "Phone in", and it
16 lists a contact of Jennifer Boreman, and the
17 comment starts, "Sent the following e-mail".
18 Are you with me?

19 A. Yes.

02:00 20 Q. This is actually Physicians
21 Affiliated Care that we looked at e-mails
22 about earlier. Correct?

23 A. It looks like it, yes.

24 Q. And the entry that we find in

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1 CMS is the one we looked at earlier where the
2 next step is to follow up with you to see if
3 the equipment could be written off. Correct?

4 A. Yes.

5 Q. And then if you look at the next
6 page we see the entry talking about the
7 conversation with Jennifer and then granting
8 the written authority to remove the equipment
9 and the statement that Physicians Affiliated
10 Care is not liable for the equipment. Right?

11 A. Yes.

12 Q. Now, did you see anything in the
13 CMS entry about the Endocrine Medical Group
14 that we looked at first, where the equipment
15 was requested to be written off, or this
16 Physicians Affiliated Care handling of the
17 obsolete equipment that leads you to believe
18 that any policies or practices were violated
19 and would need to be corrected?

20 MR. BERNAY: Object to the form.
21 You may answer.

22 A. I don't see anything that would
23 raise any red flags, no.

24 Q. Would you look at the practice

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1 number 3487896? It should be Rheumatology
2 Center, Inc.

3 A. Yes.

4 Q. All right. There's a lot of
5 these entries. Please flip to the page where
6 it changes from Rheumatology Center, Inc. to
7 the next practice. The next practice is
8 James B. Lesser and then John A. Goldman.

9 It's maybe the sixth page of these entries.

02:03 10 Please take a look at the third to last entry
11 for Location 3487896, the Rheumatology
12 Center, Inc. It's got a "Data Created Date"
13 of February 28th, 2012, and it says,
14 "Phone-in" in the next column over. Are you
15 with me?

16 A. Yes.

17 Q. And it says Kelly Schulkers is
18 the person who created the comment?

19 A. Yes.

02:04 20 Q. Or, excuse me, Kelly Schulkers
21 is the person who was spoken to. The comment
22 says, "Per conversation with Kelly, Equipment
23 Node and Serial Number tab have been updated.
24 Asked Vida to mark CPU lost on SNR since tech

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1 wasn't able to retrieve it. Only monitor is
2 being returned." Did I read that correctly?

3 A. Yes.

4 Q. This comment doesn't provide a
5 reason that the tech wasn't able to retrieve
6 it, does it?

7 A. No, it doesn't.

8 Q. Nevertheless, the person who
9 entered this is asking you to mark the CPU
10 lost. Correct?

11 A. Yes. If you look above there it
12 says, "Cancelling" -- all right. Yes.
13 "Removed our equipment prior to our return
14 visit."

15 Q. And then returned it to
16 Contingent?

17 A. "Equipment has been removed by
18 RHN and returned to Contingent."

19 Q. Did you have anything else to
20 say about that?

21 A. Some of these computers were
22 returned after the fact. We received them
23 through the mail directly to our office.

24 MR. BERNAY: Let's take a break.

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1 (Break taken.)

2 Q. Earlier you mentioned
3 communicating by e-mail in the course of your
4 duties. Right?

5 A. Yes.

6 Q. And I remember you mentioning
7 that you always e-mail doctors offices at
8 least twice if there's an obsolete CPU that
9 has not been retrieved. Right?

02:14 10 A. It's not always -- it's not only
11 obsolete. It's any CPU monitor, whatever the
12 equipment is.

13 Q. Including obsolete CPUs but also
14 including other things?

15 A. Yes.

16 Q. And you also sometimes e-mail
17 instructions to vendors regarding how they
18 should treat equipment in offices. Right?

19 A. Yes.

02:14 20 Q. And those e-mails would
21 sometimes include instructions about obsolete
22 CPUs. Right?

23 A. Yes.

24 Q. You also have internal e-mails,

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1 e-mails with other Patient Point employees
2 regarding whether or not a CPU is obsolete
3 sometimes. Right?

4 A. Yes.

5 Q. In fact, you mentioned that
6 since the time you started working in this
7 role at Patient Point up through even today,
8 even though you've provided them with the
9 matrix already, members of the Practice
10 Relationship Management Team pretty often
11 e-mail you to ask whether a CPU is obsolete
12 or not. Right?

13 A. That's correct.

14 Q. And some subset of those e-mails
15 also ask you what you think ought to be done
16 about it. Right?

17 A. That's right.

18 Q. Do you have a practice that you
19 use to store your e-mails or file them away?

20 A. Not really, no.

21 Q. They come in -- is it Outlook?

22 A. Outlook, yes.

23 Q. They come into your inbox. Do
24 you have folders where you store any, or do

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1 you operate wholly out of your inbox?

2 A. Out of my inbox.

3 Q. Do you have a sent e-mail file
4 that you can look into? It might be you
5 click on it over to the left when Outlook is
6 open.

7 A. I have one, yes.

8 Q. Do you ever look in that sent
9 e-mail file to see something that you sent to
10 somebody a while back?

11 A. Not usually.

12 Q. But there are old e-mails in
13 there?

14 A. Sometimes, yes.

15 Q. And do you have a deleted folder
16 when you open Outlook?

17 A. Yes.

18 Q. Do you ever look in the deleted
19 folder and look at e-mails that you've
20 clicked to be deleted but you know they're in
21 that deleted folder?

22 A. Sometimes.

23 Q. Are there -- is your e-mail
24 system set up so that the e-mails in your

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1 deleted folder disappear periodically, like
2 up through a certain date?

3 A. I get so many spread sheets in
4 my delete, in my e-mail that I can't keep any
5 for very long, because it blows up. I do so
6 many reports and everything that I just -- I
7 can't. It yells at me.

8 Q. There's a space problem?

9 A. Yes.

02:17 10 Q. So how -- do you go into your
11 deleted folder and then --

12 A. Delete everything.

13 Q. Have you heard of that called
14 the hard deleting?

15 A. No.

16 Q. Anyway, you go into the delete
17 folder, you select "all" and then you delete
18 it all?

19 A. Delete it.

02:18 20 Q. How often do you do that?

21 A. Whenever it starts yelling at
22 me.

23 Q. And does that happen monthly?

24 A. Oh, probably once a week. No.

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1 Probably once a month.

2 Q. Once a month. And has that been
3 true for say the last three years?

4 A. At least.

5 Q. Now, what about your sent file,
6 does the same thing apply, or is that handled
7 differently?

8 A. The same thing applies to -- I
9 have such a small amount of space that I can
10 keep, and these spread sheets that I send
11 back and forth are enormous.

12 Q. So about once a month for the
13 past three years, approximately, you've gone
14 into your sent e-mail folder and deleted
15 everything?

16 A. Close to everything, yes.

17 Q. What, if anything, do you keep?

18 A. I keep very little. I really
19 don't have any reason. We have comments in
20 CMS. The only thing that I really go back
21 and look for is to see if someone sends me
22 something and I check by Location ID to see
23 if I got something, and that's probably to
24 look a week back.

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1 Q. So there's nothing in your sent
2 folder that you've kept for more than a month
3 or so?

4 A. Probably not.

5 Q. And then your inbox, is there a
6 size limitation on that?

7 A. I have a size limitation on
8 everything.

02:19

9 Q. So how do you deal with e-mails
10 in your inbox that need to be deleted?

11 A. I delete them as soon as I can.

12 Q. And do the old e-mails kind of
13 pile up at the bottom?

14 A. Yes.

15 Q. Is there an automated process
16 that gets rid of those, or do you have to go
17 in and delete them?

18 A. I have to go in and delete them.

02:20

19 Q. Do you handle that about the
20 same as your deleted folder and your sent
21 folder?

22 A. It's a little bit slower, but
23 yes.

24 Q. So maybe -- anything that's over

Vida Albert, 4/11/2014

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1 two months old in your inbox is most likely
2 deleted?

3 A. Most likely.

4 Q. And you go in and kind of pare
5 that down every month to two months?

6 A. Something like that, yes.

7 Q. Are the practices' e-mails back
8 to you copied and pasted anywhere?

9 MR. BERNAY: Object to the form.

02:20 10 You can answer.

11 A. I don't copy and paste any
12 e-mails from the practices anywhere.

13 Q. The CMS entries that you make,
14 are they a one to one ratio with the e-mails
15 that you receive from a practice, or do you
16 kind of summarize your correspondence
17 somehow?

18 A. I generally summarize. "I
19 received an e-mail from Jane at" such and
02:21 20 such a practice "who stated that the CPU is
21 in the hall closet beside the x-ray room",
22 blah, blah, blah.

23 Q. And that might summarize a
24 couple of different e-mails if you've been

Vida Albert, 4/11/2014

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1 going back and forth?

2 A. Yes.

3 Q. There's other information in the
4 e-mail that doesn't make it into CMS. It's
5 just a summary. Right?

6 A. That's correct.

7 Q. What about your e-mails with
8 members of the Practice Relationship
9 Management Team, do those get entered into --
10 do you summarize those in CMS?

11 A. Those are a little bit
12 different, because when we send those back
13 and forth we're usually using CMS to respond
14 to one another. I type something in CMS and
15 send it to someone and they in turn type
16 something in CMS and send it back to me. So
17 those usually are all in CMS.

18 Q. When you make a decision to
19 write off an obsolete CPU, that decision is
20 sometimes conveyed to Practice Relationship
21 Management Team either in phone or in person.
22 Right?

23 A. That may be, yes.

24 Q. And then they don't always

Vida Albert, 4/11/2014

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1 record that conversation in CMS. Right?

2 A. That's correct, but it would go
3 on a report.

4 Q. The Serial Number Change Report?

5 A. That's correct.

6 Q. But that report would just
7 reflect "Change this serial number to this
8 category." It wouldn't talk about the
9 reasons that that decision was made. Right?

02:23 10 A. Not necessarily, no.

11 Q. The -- does the Serial Number
12 Change Report have any comment area in it?

13 A. It does. It lists things like
14 the item was lost. In the case of obsolete
15 equipment I'm afraid it only says it was
16 obsolete. In the case of lost equipment, it
17 tells how it was lost. In the case of stolen
18 equipment, it states that the site was
19 burglarized or something like that. It gives
02:24 20 a little bit of information but not a lot.

21 Q. And when you say it gives a
22 little information, you put a little
23 information into it?

24 A. Yes.

Vida Albert, 4/11/2014

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1 Q. But that report would not
2 describe the circumstances that led you or
3 the Practice Relationship Management Team
4 member to allow an obsolete CPU to stay at a
5 practice, would it?

6 A. No, it would not.

7 Q. The Practice Relationship
8 Management Team member would make a CMS entry
9 for what they told the practice. Right?

02:24 10 A. That's correct.

11 Q. But there wouldn't be a separate
12 entry just for the conversation that they had
13 with you. Right?

14 A. Not necessarily.

15 Q. There might be one but there
16 might not be?

17 A. There might not be.

02:25 18 Q. And the same is true when you
19 make that decision or give that information
20 by e-mail. Right?

21 A. That's possible, yes.

22 Q. So there may be a CMS entry
23 about your e-mail exchange with the member of
24 the Practice Relationship Management Team

Vida Albert, 4/11/2014

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1 internally or there may not be?

2 MR. BERNAY: Object to the form.

3 You can answer.

4 A. That's possible.

5 Q. Either one of those is possible?

6 A. That's right.

7 Q. At any point in the last four
8 years has anyone asked you to change how you
9 handle your e-mails and the deletion of your
10 e-mails?

11 A. No one has ever said anything
12 except IT.

13 Q. And has IT ever asked you to
14 keep e-mails in another place or not delete
15 them on the schedule that you have been?

16 A. No.

17 Q. And no one else has given you
18 any instructions about not deleting certain
19 e-mails?

20 A. No.

21 Q. When you make a CMS entry about
22 obsolete equipment, do you always use the
23 word "obsolete" or do you sometimes make
24 entries that would just say "write off CPU"

Vida Albert, 4/11/2014

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1 or "change to damage/destroyed" without using
2 the word "obsolete"?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. I honestly don't know. Most of
6 the time I use obsolete, but I couldn't say I
7 use it 100 percent of the time. I just don't
8 know.

9 Q. There have been hundreds of
10 situations where you're dealing with obsolete
11 CPUs. Right?

12 MR. BERNAY: Object to the form
13 and mischaracterization of prior testimony.

14 A. There have been a lot.

15 Q. Hundreds. Right?

16 A. A lot, yes.

17 Q. More than that?

18 A. There's been a lot. I -- I
19 couldn't give you a number. I'm sorry.

20 There have been a lot.

21 Q. Well, you said that there were
22 several hundred in the field in 2012 and
23 before. Right?

24 A. Yes.

Vida Albert, 4/11/2014

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1 Q. And we're not sure if that
2 number is over a thousand?

3 A. No.

4 Q. We just don't know?

5 A. Don't know.

6 Q. There's a way to find that out.
7 Right? I'm just thinking every CPU has a
8 serial number that Patient Point keeps track
9 of. Right?

02:28 10 A. That's correct.

11 Q. And from the serial number you
12 can determine whether the CPU is obsolete or
13 not. Right?

14 A. That's correct.

15 Q. And each warehouses serial
16 number list -- let me start that over. How
17 would we make a complete list of all CPUs?
18 Where would that information be? They're all
19 listed out somewhere?

02:28 20 A. They are listed on the Serial
21 Number Report.

22 Q. The Serial Number Report, not
23 the Serial Number Change Report?

24 A. That's correct.

Vida Albert, 4/11/2014

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1 Q. And is that a single report for
2 the whole company or is it divided per
3 warehouse?

4 A. We have two warehouses. One
5 warehouse deals with our Practice Wire
6 equipment. The other warehouse deals with
7 all of the WRN equipment. Contingent is that
8 warehouse. That warehouse has nothing but
9 WRN equipment in it, and that Serial Number
10 Report would have all of the obsolete
11 equipment on it.

12 Q. Even lost, damaged, destroyed
13 ones would still be on the list, their
14 category would just be listed as lost,
15 damaged, destroyed?

16 A. That's correct.

17 Q. Does that Serial Number Report
18 also include the installed CPUs?

19 A. Yes, it does.

20 Q. So, if I had the Serial Number
21 Report from Contingent in front of me -- have
22 you seen that report before?

23 A. Every day.

24 Q. That's one of the spread sheets

Vida Albert, 4/11/2014

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1 you get?

2 A. Yes.

3 Q. Are the rows numbered?

4 A. Yes.

5 Q. Do you know how many rows there
6 are?

7 A. Off the top of my head, no. It
8 changes daily.

9 Q. Thousands and thousands?

02:30 10 A. There's, I believe -- the last
11 time I counted there were 10,000 installed
12 CPUs.

13 Q. Do the installed ones appear at
14 the top of the list?

15 A. No. They just -- they are
16 broken down by the type of CPU that they are.

17 Q. So all of the Lenovos would be
18 in a row?

02:31 19 A. On their own spread sheet. It's
20 a workbook, Excel workbook.

21 Q. And there's some Lenovos that
22 are obsolete and some that are not. Right?

23 A. That is correct.

24 Q. So that tab, that, you know,

Vida Albert, 4/11/2014

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1 spread sheet in the workbook that is the
2 Serial Number Report would list all of the
3 obsolete CPUs and then some other CPUs that
4 are not obsolete?

5 A. That's correct.

6 Q. Would the ones that are obsolete
7 all be in a row because their model numbers
8 and serial numbers are kind of in that order?

9 A. If you sorted by them, yes.

02:31 10 Q. And do you know how many serial
11 numbers are on the Lenovo tab?

12 A. No, I don't.

13 Q. So, since about 2012, when there
14 were hundreds of obsolete CPUs in the field,
15 there's been a consistent effort to upgrade
16 those CPUs when there are service calls, to
17 sometimes upgrade them when there's no
18 service call just to get the upgrade done,
19 and also to retire them when there are
02:33 20 cancellations rather than reuse them. Right?

21 A. That's correct.

22 Q. Do you have any sense for
23 whether that process is almost complete or
24 not or if there are still hundreds left?

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1 A. We don't have -- well, the --
2 the ones that they were most anxious to get
3 out of the field were the older ones, the
4 M-41s and the M-42s, and I know that we have
5 very, very few of those out there. I think
6 there were two M-41s left and maybe ten M-42s
7 left. Those were the ones that we needed to
8 get out of the field, because those are the
9 ones that are shutting down when they convert
10 to the Internet. The others I couldn't be
11 certain how many of those are out. The M-41s
12 and the M-42s are the ones they asked me
13 about most often.

14 Q. Do you know about how many M-41s
15 and M-42s there were when they became
16 obsolete?

17 A. I want to say about 50 of each.
18 I can't be certain. We're going back a
19 couple of years and I just don't remember.

20 Q. And how many other types of
21 obsolete CPUs are there?

22 MR. BERNAY: Object to the form.
23 You can answer.

24 A. There were three other types,

Vida Albert, 4/11/2014

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1 M-50s, M-51s and M-52s.

2 Q. Do you know about how many of
3 each of those that exist?

4 MR. BERNAY: Object to the form.

5 A. I honestly just don't remember.

6 Q. Do you know if it's more than
7 the M-41s and M-42s?

8 A. There are more than the M-41s
9 and M-42s.

02:35 10 Q. Each has more than 50 or all
11 combined?

12 MR. BERNAY: Object to the form.

13 A. Each has -- I would say each
14 have more than 50, but I honestly don't know
15 the number.

16 Q. There's no list of the CPUs that
17 -- let me start again. Is there a list of
18 the CPUs that Patient Point has decided to
19 stop trying to retrieve from practices?

02:36 20 MR. BERNAY: Object to the form.
21 You can answer.

22 A. No.

23 Q. If Ms. Theiss came to you and
24 said try to make your best list possible of

Vida Albert, 4/11/2014

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1 the CPUs that Patient Point has decided over
2 the years not to try to retrieve anymore from
3 practices, how would you go about that?

4 MR. BERNAY: Object to the form.

5 A. I've never been directed to do
6 that and I -- there's never been -- nobody
7 has ever said anything exactly like that, and
8 I wouldn't know how to make a list like that.

9 Q. No one has ever asked you to
10 keep track of that?

11 A. No.

12 Q. And no one has ever asked you to
13 keep track of the reasons that obsolete CPUs
14 have been left with practices as opposed to
15 retrieved and destroyed?

16 A. No.

17 Q. And that's why -- never mind.
18 So the best information we have is an
19 estimate that somewhere north of 100 obsolete
20 CPUs have probably had the decision made to
21 not try to retrieve them anymore and we're
22 not sure if the number is higher than that?

23 MR. BERNAY: Object to the form.

24 You can answer.

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1 A. For a varied number of reasons,
2 yes.

3 Q. As we saw in the exhibits that
4 we've looked at today, some of the obsolete
5 CPUs for which Patient Point has decided to
6 stop trying to retrieve them were left at
7 practices that decided to have their own
8 patient education program. Correct?

9 A. Yes.

02:38 10 Q. And some of the obsolete CPUs
11 that Patient Point decided to stop trying to
12 retrieve were left at practices that switched
13 to competitors. Correct?

14 A. Yes.

15 Q. Some of the obsolete CPUs that
16 Patient Point decided not to try to retrieve
17 anymore were left at practices that desired
18 to play Patient Point's loops but just over
19 and over again as they were at the time of
02:39 20 the cancellation instead of getting updates.
21 Right?

22 A. That's correct.

23 Q. Some of the CPUs that Patient
24 Point decided to stop trying to retrieve were

Vida Albert, 4/11/2014

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1 left at practices who desired to donate them
2 to schools or somewhere else locally.

3 Correct?

4 A. That's correct.

5 Q. Some of the CPUs that were
6 obsolete and that Patient Point decided to
7 stop trying to retrieve were left at
8 practices who wanted to salvage them for
9 other uses in some way that was unspecified.

02:40

10 Correct?

11 MR. BERNAY: Object to the form.

12 You can answer.

13 A. That's correct.

14 Q. There is no way to say right now
15 how many obsolete CPUs fit into each of the
16 categories that I just listed. Correct?

17 A. No, there isn't.

02:40

18 Q. But in no case did a practice
19 sign a new contract or promise that what they
20 said they were going to do with the CPU --
21 let me start again. In no case did a
22 practice that was taking responsibility for
23 an obsolete CPU sign something promising to
24 handle it in the way that they were telling

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1 Patient Point it was going to be handled.

2 Right?

3 MR. BERNAY: Object to the form.

4 You can answer.

5 A. Would you restate that?

6 Q. Sure. Was there any instance in
7 any of the situations that I just listed out
8 where the practice signed something promising
9 to handle the CPU in that way?

02:41 10 MR. BERNAY: Object to the form.

11 A. There was no time that anyone
12 signed anything, no.

13 Q. And in all of the cases where
14 the practice was cancelling at the time that
15 Patient Point decided not to retrieve the CPU
16 there was no longer a relationship based on
17 the enrollment form. Correct?

18 MR. BERNAY: Object to the form.

19 A. No.

02:41 20 Q. No, there was no longer a
21 relationship? My question was correct.
22 Right?

23 A. That's --

24 MR. BERNAY: Could you read back

Vida Albert, 4/11/2014

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1 that question?

2 (Record read by Reporter.)

3 MR. HANKINSON: Let me just ask
4 a different question, if that's okay.

5 MR. BERNAY: All right.

6 Q. A cancelling practice ceases its
7 relationship with Patient Point under the
8 enrollment form. Correct?

9 MR. BERNAY: Object to the form.

02:42

10 A. Yes.

11 Q. There's no policy in place that
12 requires -- let me start again. Is there any
13 policy in place that requires a Patient Point
14 employee to get a contract from the practice
15 before deciding to allow the practice to keep
16 an obsolete CPU?

17 MR. BERNAY: Object to the form.
18 You can answer if you understand the
19 question.

02:43

20 A. No.

21 Q. Thinking back over the course of
22 the day, is there any answer that you'd like
23 to add to or change? I'd just like to give
24 you an opportunity now. I'm not saying that

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1 there should or shouldn't be. Just if
2 anything has sprung to mind in the meantime
3 I'd like to give you an opportunity to let me
4 know about it. Is there anything that you'd
5 want to add, change, subtract about what
6 you've said today?

7 A. One thing that I would like to
8 point out about leaving equipment at a site
9 that has cancelled, in particular ones that
10 want to keep the equipment on the wall,
11 sometimes it's a choice because they don't
12 want the holes to show, but other times it's
13 a good business decision because they look up
14 there and they see the loop playing, and
15 maybe it's the decision of a doctor that's in
16 the practice right now that they don't want
17 us, they do not want to continue with us. We
18 leave the equipment up there and another
19 doctor joins the practice and they see it up
20 there and they see what -- they see what's up
21 there and they look at it and wonder if
22 they've got something new now, and it sparks
23 a call. They call in, they find out a little
24 bit more about us, or they check, they look

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1 at us on the web and they call in, they find
2 out more about us. They find out that we
3 don't just have this little 19-inch screen
4 anymore. We've got a 32-inch screen or a
5 42-inch screen or a new program that they can
6 find. It's good business to leave those up
7 there sometimes. So there's a lot more that
8 goes into it than just saving a dollar.
9 Sometimes it's just good business.

02:45 10 Q. There's other costs and benefits
11 that play into Patient Point's decision about
12 whether to leave a CPU at a practice. Cost
13 is just one of them?

14 A. Yes.

15 MR. HANKINSON: Okay. I think
16 I'm done.

17 MR. BERNAY: Okay. I just have
18 a few very short questions before we -- and
19 then we'll be done.

02:46 20 DIRECT EXAMINATION

21 BY MR. BERNAY:

22 Q. So, Ms. Albert, you're not an
23 attorney, are you?

24 A. Nope.

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1 Q. You're generally familiar with
2 the Enrollment Agreements between Healthy
3 Advice and its practices. Is that fair?

4 A. Yes.

5 Q. And there are obligations on the
6 practice in those agreements. Is that right?

7 A. That's right.

8 Q. And do you know the exact point
9 in time when a cancellation is effective and
10 ends a contract?

11 A. When the site has -- when the
12 equipment is removed, when they say that they
13 no longer want our equipment in their office
14 and they no longer want to do business with
15 us.

16 MR. BERNAY: I have no further
17 questions.

18 MR. HANKINSON: I think we're
19 done. Appreciate your time. Thank you.

20

21

22

23

24

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VIDA ALBERT

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(DEPOSITION CONCLUDED AT 2:47 P.M.)

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1 C E R T I F I C A T E

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STATE OF OHIO

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COUNTY OF HAMILTON

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I, Vicky Marcon, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that VIDA ALBERT was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotype and transcribed by me by means of computer; deposition was made available to the witness for examination and signature; I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio this 16th day of April, 2014.



Vicky Marcon

My commission expires: Vicky Marcon, RPR
March 17, 2019 Notary Public - State of Ohio

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